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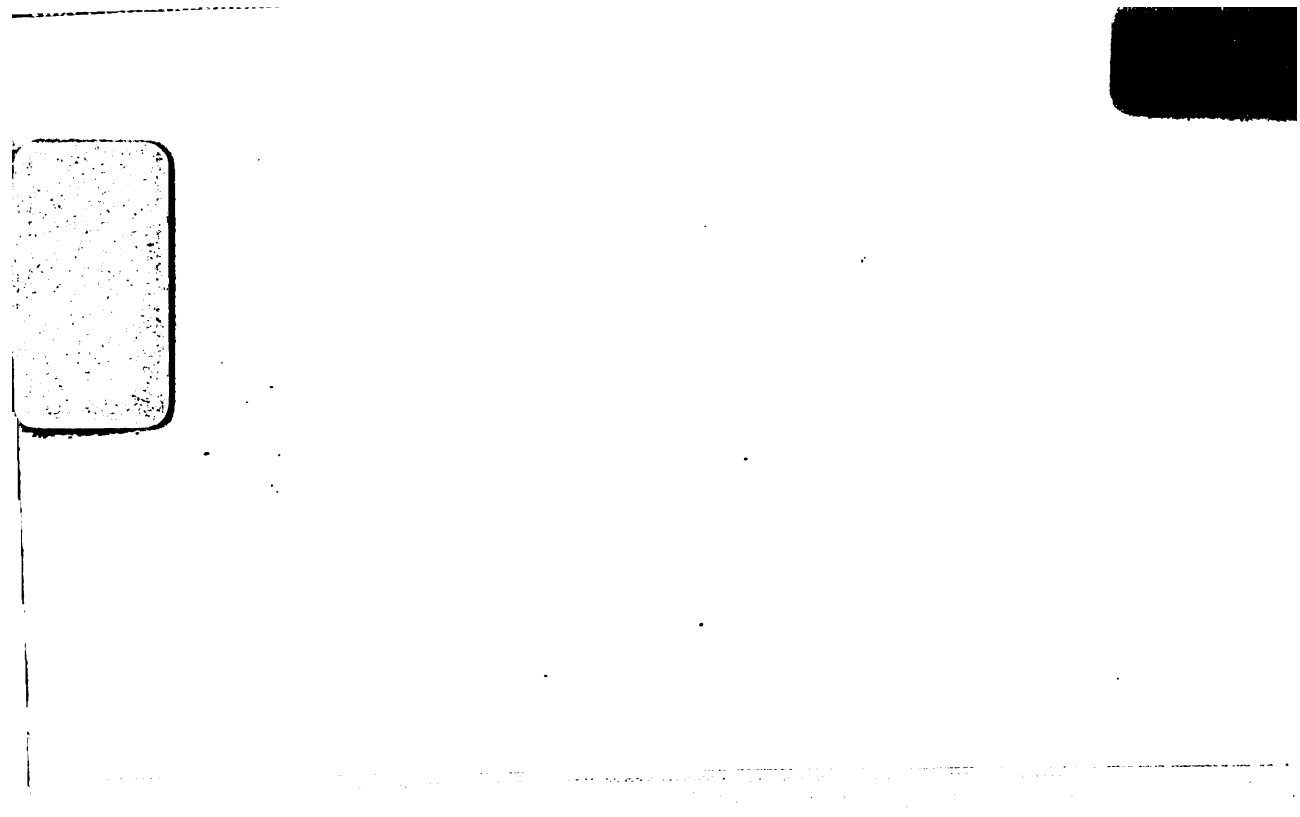

# ANNEX

Vergelaire!

# SLAVERY IN GERMANIC SOCIETY DURING THE MIDDLE AGES

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# SLAVERY IN GERMANIC SOCIETY DURING THE MIDDLE AGES

*By*

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# PREFACE

That loyal affection to Dr. Wergeland's memory should suggest the thought of reprinting her monograph on *Slavery in Germanic Society during the Middle Ages* will seem wholly natural, as certainly it will be deeply gratifying, to all those who really knew her. While she was much else than merely a scholar—a woman of noble character, a valiant soul, generous, straightforward, friendly, an inspiring teacher, and a literary writer of varied accomplishments in more than one language—it was impossible not to wish that something of what she did in the field of scholarship, the field into which she threw the main endeavors of her forcible and energetic mind, might be preserved in a permanent form. The circumstances of her life, especially the devoted work of the teacher, did not permit the completion of any large book. From among her lesser writings a wise choice has been made of her papers on

mediaeval slavery, originally printed in the *Journal of Political Economy*.

The theme is one of much importance, and especially for American readers. Slavery has a large place in the history of the United States, yet the story of its development, institutional characteristics, and abolition has been pursued almost entirely as if slavery had never existed in other lands and other times. The history of American slavery, in other words, has not had that additional light cast upon it which would come from comparative study, though it is well known how potent an illuminator the comparative method has proved itself to be in many other fields of economic and social history. In reality, we cannot hope to attain a true understanding of American slavery in some of its most essential aspects unless we are somehow made mindful of the history of slavery as a whole.

The history of slavery in the Middle Ages has received much less attention than that of serfdom, and perhaps less with respect to the Germanic portions of Europe than the

southern lands. Dr. Wergeland's contribution to it is marked by great learning. That is a matter of course. Especially valuable is the information she brings from her extensive reading in the legal writings of mediaeval Scandinavia. But the reader will also see the evidences of logical, and even of philosophical thinking, and of a large, general grasp of the institutional history of Northern Europe as a whole. He will see a close appreciation of the working of economic motives. He will see the marks of a cultivated mind, and will probably be struck with the excellence of the English, in the case of one to whom English was not the native tongue. If in some small instances he detects a slight foreign flavor, it is compensated by a certain originality and piquancy of phrase, in other places, that were characteristic of the author.

It will be the hope of all Dr. Wergeland's friends that the publication of her essay in its present form shall aid to perpetuate her memory in a way she would have especially liked, for certainly she shared the "inward

prompting" that Milton has described, "that by labor and intent study (which I take to be my portion in this life), joined with the strong propensity of nature, I might perhaps leave something so written to after times as they should not willingly let it die."

J. FRANKLIN JAMESON

CARNEGIE INSTITUTION OF WASHINGTON
March 22, 1916

# AUTHOR'S PREFACE

"Eis qui calamitatem pati potuere et fortuna adversa luctantes denique superavere."

In Ingram's *History of Slavery* many may have missed an adequate treatment of this social status during the Middle Ages. English historians generally seem to consider slavery in the mediaeval period as an imperfect type, more akin to serfdom. They therefore conclude their investigations with the downfall of the Roman Empire. After that, in their opinion, slavery seems to have lost character. Nevertheless the Germans brought slaves with them when they first appeared upon the scene. Slavery existed with them, as it always exists where war is the predominant occupation and booty the chief income, and it accordingly was of no uncertain type. Moreover, the entrance of the Germans into relations with the socially and economically highly developed Roman world, where slavery was looked upon as

one of the chief pillars of economic existence, the upheaval and wholesale reduction of classes succeeding the conquest, and finally the burden of maintaining an extensive new empire at whatever cost, could not lead to abolition of slavery. Sometimes, indeed, these things helped the slave to become master; but, on the whole, they prolonged the existence of slavery as an institution. That slavery comparatively early passed into serfdom cannot change the fact that for centuries it existed as a recognized and feared state of extreme servitude, of which the harsh features were often German and Roman combined. For it is not true that as a race the Germans were averse to servitude. On the contrary, the free and omnipotent warrior needs the slave as his social contrast; and it was the North, untouched by Roman influences, that showed the slave most absolutely subjected; not the South, where he more easily became a serf. The readier change was no doubt due to the greater number of slaves in the South, and number, as Sohm says, is power. The only difference

between slavery with the Romans and with the Germans is that among the Romans we can far more properly speak of slavery as a state that comprised numberless individuals who do not further occupy us; whereas among the Germans it is more to the point to speak of the slave as an individual whose state can be judged of from his particular case. But this difference is really due to the imperfect economic opportunities of the Germans, rather than to original intention. For when conditions changed, as they later did, and serfdom came to take the place of slavery, which in theory happened very early, the serf of Germany and France, and I venture to say of England as well, was hardly better off than the Roman *colonus*. His state was practically economic slavery, and it was perhaps even harder than it seems, since it had the semblance of personal liberty.

To attempt to verify some of the statements just made, and to give a more exact conception of the meaning and bearing of slavery among the Germanic races, is the

object of this monograph. Owing to circumstances, however, it cannot be more than a generalization. I have wished, nevertheless, to make use of the sources, as far as they have been at my disposal, and also of the extensive studies of social conditions in the Middle Ages which characterize the later German historical school, and which are not generally known to American readers. The vast material has been reduced to as simple and manageable a compass as the subject would permit, and I have limited the references as much as possible in order not to overburden the text. References to law could not always be quoted in full, especially in the case of laws so little known as the Scandinavian and Icelandic. Authors, such as Wilda, Amira, and Grimm, who give translations of these laws, would usually be of greater service, and they again give further references.

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# CHAPTER I

## INTRODUCTION

We draw our information concerning slavery mainly from two sources: from history and from the laws of the nations with which we are dealing. History gives a few leading hints of the origin and development of slavery, but that it never proceeds to discuss or explain the nature of slavery is because it is naturally less concerned with definitions than with events. For more exhaustive knowledge we turn to the laws. These, if not always explicit, attempt to lay down rules for conduct from which it is possible to draw definite conclusions concerning almost every relation of life. Slavery, besides being a feature of society, is above all a juridical relation, and belongs almost exclusively under the head of civil law. If, however, the slave figures conspicuously in the paragraphs of the criminal code, this is due to his peculiar double relation as thing and as man.

I shall begin with a review of the principles leading to the development of slavery and constituting its main features. The study of institutions, as institutions, may in other cases afford much satisfaction, but in regard to slavery it offers only meager results, because the situation of the slave is, and must be, in the main, the same everywhere. This is plain from the start, self-evident. The variations according to nations and customs are but insignificant, and the general outcome one type. Only when slavery approaches its termination, when inner and outer influences combine to break the awful monotony and create true change, does it call for specialization in treatment. The psychological problem of whether and how a human being can live in such narrow, unindividual bounds interests us less than when and how he got beyond them into freer, more natural conditions of life. After all, we know that a slave-relation is impossible; sooner or later the human being or a succession of generations must press out of it. Therefore, in treating of the slave

proper, the scientific method usually employed is better replaced by the philosophical; since the points of interest to the student of civilization are far more the reasons and main features of slavery than the national or tribal differences, which indeed have little bearing on the whole.

Slavery, as a feature of human life, may in general be studied from two main points of view: that of reduction, the original and crude form; and that of restitution, the later and improved state, which must end in liberty. Reduction (or utility may serve as well) presents itself at once as the governing idea in slavery. The slave exists for *use;* in the earliest time perhaps to be devoured as game; later to be sacrificed to gods and heroes:

*Saga Olafs Trygvasonar* (*Heimskringla*), c. 74: "En ef ek skaltil blota hverfa með yðr," etc. "But look ye, if I turn me to offering with you, then will I make the greatest blood-offering that is, and will offer up men, yea, and neither will I choose hereto thralls and evil-doers; but rather will I choose gifts for the gods the noblest of men." (tr. by William Morris).

And finally the slave exists to work. He is nothing more than the beast of burden whose fate he generally shares, except that he possesses faculties which make him more valuable property, though more dangerous, than the dumb brute or the dead tool. And here, in his double character as object and as person, lies the problem which the social ideas governing his reduction or his restitution have to solve. His double existence as thing and as man presupposes different relations (as thing, a relation to an owner; as man, a relation to a fellow human being), and must lead to different solutions. The emphasis given to the one or to the other side of his existence creates an egoistic or an altruistic attitude. If self-interest governs the relation, an obstinate maintenance of slavery is the result. If the humane attitude dominates, the slave must gradually be put on an equal footing with his master. The final solution of the problem is indeed foreshadowed in the want of harmony inherent in slavery between

ethics and business, so that however often slavery reappears as an outcome of political or economic needs, it after all bears the stamp of transition and in the end must reach freedom. This, I trust, will all become clearer as the essay proceeds.

## CHAPTER II

### REDUCTION; UTILITY; THE DOWNWARD COURSE, THE SLAVE BECOMING MORE AND MORE A THING

#### A. FLUCTUATING STATE

From the standpoint of utility and self-interest, the conditions by which slavery is brought about may be either artificial, i.e., not having existed previously, but created by some forcible act to serve a certain purpose, or natural, i.e., growing out of precedents already established, of which slavery as an institution is a last consequence. In the case of the artificial conditions a man had been free, an equal of his fellows; but by a sudden turn of fortune, and for reasons further to be explained, he is reduced to servitude. A new class of people is thus started, yet not established unalterably and forever. In the case of the natural conditions, however, the fluctuating relation becomes by long usage permanent; it is con-

tinued, and its continuation introduces into society, not a new class merely, but in the course of time literally a new race. In this race the inferior qualities predominate, being no longer hypothetical, but real, fixed, and typical; and the subordinate relation is not *de jure* but *de facto*. Let us remember the passages in the magnificent old Norse poem, *Rigsþula*, relating to the origin of classes: "Lowest stands the black-haired, deformed slave (black-haired because of foreign origin) with heavy awkward step and boorish manners—a slow worker; then the well-to-do peasant, who prides himself on his appearance; then the noble, grown up in the pleasurable exercise of his body, with the yellow hair, the fair skin," etc. The Christian democratic view may scorn distinctions like this and consider them devoid of meaning; the pagan aristocratic view could and would not disavow them, and it is with this side of Germanic life that we have to do.

Man may be enslaved through conquest, purchase, or crime.

1. History furnishes the first evidence of the establishment of transitory slavery by means of war and brute force. War is probably the oldest and most natural mode of recruiting a slave class before there exists a permanent, self-perpetuating slave class.[1] This mode is less an article of actual law than a paragraph of international and universal custom, which by simple logic of force decrees that whoever succumbs in might succumbs also in right; the loss of power is the loss of self. Whoever cedes his arms cedes all—life, liberty, even identity.[2] History affords plenty of instances of the making of slaves as a chief booty of war. Even after Christianity had begun its ameliorating work, we find in Gregory of Tours a passage like this: Theodoric says to his people: "Follow me, and I will lead you into a land where you will find gold and silver as much as you desire. There you can have herds and slaves and clothes in

[1] Grimm, *R.A.*, p. 320.

[2] *Ibid.*: "Na rechter Wahrheit," etc.; p. 322: "Aus den besiegten," etc.; p. 323: ". . . . es fragt sich," etc.

abundance."[1] In the wars between the sons of Chlodevech each brother made slaves of the prisoners taken from the other. Slave trade was common over the whole continent till after the tenth century,[2] and the greater number of these slaves must have been acquired by war, if not by positive conquest.[3] Thousands of instances in all history illustrate this custom. It is to such an extent a matter of custom that no further word concerning it appears necessary.

2. History also informs us of the establishment of a slave class by the second means of enslavement, namely, purchase (barter, trade). For this the stage of being already a prisoner and thus bereft of liberty may be considered a necessary prerequisite. Trade with slaves was a most ordinary

[1] Gregory of Tours, iii. 11.

[2] In the Scandinavian countries and in England slavery was abolished in the twelfth century. But the laws of the thirteenth century (later Gþl., Norway) and of the fourteenth century (Sweden and Denmark) still speak of the "slave."

[3] Grimm, *R.A.*, p. 323: "Gegen slaven und heiden," etc.; but p. 342: "Liest man die traditionen," etc.

feature of border life.[1] The German father had power to sell his child and his whole household into captivity.[2]

*Edict. Pistense* (864), c. 34: "In lege etiam quam praedecessores nostri et nominatissimi imperatores constituerunt de his, qui filios suos fame aut alia aliqua necessitate cogente vendunt, plura habentur capitula, quae omnia hic non necesse duximus ponere."—M. G. Legum, sectio ii. 2 (cf. Cod. Theod., iii. 3, 1; and Cod. Just., iv. 43, 1, 2).

A case of barter pure and simple is the story of how a king's son is exchanged for a ram, and then for a coat, and finally is bought for nine marks of gold.[3] The church throughout its course did all it could to stop the trade by buying the prisoners and setting them free (see *Life of St. Severin*, c. 4, 8, 10,

[1] *Laxdaela Saga* (Iceland), xii. 6–22; Grimm, *R.A.*, p. 321; Pollock and Maitland, *Hist. of Engl. Law*, Vol. I, p. 11: "Slavery, personal slavery," etc.

[2] Jordanes, *Getica*, c. 26, 135 (*Mon. Germ. Auctores*, fol. ed., Vol. V, p. 1); Grimm, *R.A.*, p. 329, "So gaben die Friesen," etc.

[3] *Saga Olafs Trygvasonar*, c. 5, 6: ". . . . en hafði sveinana með ser ok seldi þeim manni er Klerkr hét ok tok fyrir hafr einn vel goðan. Hinn þriði maðr keypti Olaf ok gaf fyrir vesl gott eða slagning," etc.—Grimm, *R.A.*, p. 321.

19, and passages in Gregory of Tours, vi. 8), but it was not effectually restrained.[1]

3. On turning to consider enslavement as a result of crime, we leave history and enter on law proper. Law reveals another phase of slavery of equally fluctuating character: the establishment of a slave class by means of punishment (crime, debt). Here we leave the field of chance, as is war, and enter regulated, orderly social life. There is no longer indiscriminate warfare with the accompanying defeat and spoil, but peaceful intercourse. The fundamental principle of such peace and order is the sense of obligation. Obligation, however, cannot be created without the infliction of punishment for neglect or violation. Germanic laws abound in rules about crime and debt. In the eyes of the German warrior the duties of the state are of the simplest kind. Government exists to protect life, secure property, and maintain the

[1] Pollock and Maitland, Vol. I, p. 12: "Selling Christian men beyond the sea . . . . forbidden by Aethelred" (Vol. V, p. 2; Vol. VI, p. 9); repeated in Cnut's *Laws* (Vol. II, p. 3), cf. *Lex Rib.*, 16; *Lex Sal.*, 39, sec. 2: "Si quis hominem," etc., . . . . under penalty of 200 sol.

border; this is all that can be demanded. Accordingly the state is found only in its crudest form, not the complicated perfected machine that the Romans knew. In all the Germanic laws the breach of peace can be atoned for by certain fines; the harsher measures, such as mutilation, exile, death, being reserved (for fear of starting the old feud and anarchy) only for the grossest offenses. Violation of property and breach of obligation to pay (fine) are more generally punished by loss of liberty for a shorter or longer time.

The free individual can thus be reduced to slavery for murder (secret), illegal relations, theft, or debt.[1]

Murder (with concealment of corpse), and theft as well, seem to the German particularly

[1] Concerning the possibility of a freeman being reduced to slavery for murder (with concealment of corpse) see Gþl., c. 156: ". . . . fellr til útlegðar" (exiled), and c. 178: þat er niðingsvíg . . . . þá fara han útlegr oc úheilagr." (Exile might under some circumstances lead to slavery. See sec. 3.) Pollock and Maitland, Vol. I, p. 33: "Slavery was a recognized penalty," etc.; Grimm, *R.A.*, p. 328: "Konnte einer," etc.; Amira, *Nordgerm. Obligat. Recht.*, Vol. I, pp. 126, 131, n. 3, and p. 480: "Der schuldknecht habe sich durch diebstahl 'verwirkt.'" See *Ine's Laws*, c. 7, p. 1; *Eadweard's Laws*, c. 6; *Lex Burgund.*, tit. xlvii. secs. 1, 2.

hateful because of their stealthy underhand nature, unworthy of a freeman.[1] The free man who violates the dignity of a free woman, and the free person, either man or woman, who forgets his position so far as to associate with slaves (marriage) becomes a slave, i.e., his behavior excludes him from the free.[2] The outlawed freeman may desire to exchange exile for slavery.[3]

Gþl., c. 260: "Nu verðr maðr of þyfsku útlagr." ". . . . outlawed for theft, the one from whom the goods is stolen shall pay himself from the thief's property and three times the value of what was stolen"; also cc. 256, 257, 258, 259.

[1] Wilda, *Strafrecht der Germanen*, p. 153; "Treubruch oder heimlichkeit," etc., pp. 706–14. As a matter of course, the murderer is an outlaw. If he cannot produce the payment to the family of the murdered, he may be kept by them as a slave. See Schroeder, *Rechtsgesch.*, pp. 72, 73.

[2] *Lex Sal.*, c. 25, 5, 6; c. ii. 12, 70; Wilda, p. 826; Grimm, *R.A.*, p. 326: "Unfreie hand zieht die freie nach sich," etc.; Thévenin, *Institutions, Charte 151;* fable in Gregory of Tours, iii. 31.

[3] Wilda, p. 515: "Mag es wohl vorgekommen sein. . . . . Es erstand durch letzteres aber keine wahre eigenschaft." See n. 1. Cf. Schroeder, p. 46, n. 1. For prohibition of a free Frank accepting slavery (instead of death?) as punishment for theft, see *Capit.*, No. 77 Boretius, a. 801–13, c. 15.

In regard to slavery for theft, or for debt,[1] the law looks on the thief who cannot restore the stolen property much as on the insolvent debtor; and on the debtor who cannot pay as on the thief of another's property. Slavery for debt seems to have been the more common of the two. A debt is any unpaid obligation, not only fines for crime and compositions, but also private dues, such as rent of land, personal debt. Debt is in itself delict; the debtor has of course been properly warned, the process has started and been concluded without satisfactory result, before execution can begin. For debt in the sense of fine not properly paid a freeman can be exiled; and slavery begins when the creditor cannot obtain any satisfaction for his claim in the debtor's property and no third person comes to the rescue.[2] Slavery is thus established for a child whose father gives it as security for a debt.[3] Slav-

[1] Passage in Tacitus, c. 24: ". . . . victus voluntariam servitutem adit."

[2] Amira, Vol. I, p. 128: ". . . . mit dem man auch dessen frau und kinder verknechtet" (Gotland).

[3] Maurer, *Die Schuldknechtschaft*, p. 4.

ery of this kind is either permanent or temporary, i.e., the debtor works off his debt in the continuous service of his creditor till the amount is paid, but not longer.

Cf. *Eadweard's Laws*, c. 6: ". . . . the debtor (as slave) shall owe as much work to the creditor as is needed to pay the debt" and not more; *Leg. Lang., Luitprand*, c. 152: ". . . . ut serviat tantos annos, ut ipsa culpa," etc.; Aregis, c. 6: ". . . . usque ad praefinitum tempus"; Thévenin, *Charte 38*: ". . . . in ea ratione ut interim quod ipsos solidos vestros reddere protuero et servitium vestrum et opera . . . . facere et adimplere debeam."[1]

*Grágas*, II. c. 227 (cod. reg. Finsen): ". . . . svá sem þrael vaeri faþir hans en ambátt moþer hans."

This seems evident from the improvement in the contract and the resignation by the creditor of a part of his rights which characterize the milder form, and which an earlier age could not have permitted. Here it is the church which in its attempt to live up to the ideal of brotherly love, to the Mosaic prohibition of usury of man (Lev.

[1] See also *Capit. Lex Rib. addit.*, a. 803, c. 3 LL. ii (ed. Bor.); *Capit. Caroli ap. Anseg. serv.*, a. 810, 811, c. 3.

Of the two forms, permanent and temporary, the first is the older.

25:39), succeeded in changing the previous atrocious custom.[1] The same desire to break the rigor of law caused the church to prefer seeing the prisoner of war, the unredeemed hostage, the exiled culprit, enslaved rather than killed. The debtor on becoming a slave was actually reduced to a slave's state; his hair was cut (?); a strap or collar was passed around his neck; he placed his head under his master's arm, etc.[2]

Thévenin, *Charte 110:* "Corrigeam ad collum meum misi"; *Charte 38:* ". . . . sic mihi aptificavit ut bracchium in collum posui"; *Charte 161:* "Quattuor itaque denarios ex more sibi supra caput posuit"; likewise *Charte 171.*

So much for what must be looked upon as characteristic of permanent slavery only. Still it would be very erroneous indeed to think of the milder form as merely make-believe.[3] That, too, is after all a mortgage of the person of the debtor to the creditor which

[1] *Aelfred's Laws*, Introd., p. 11.

[2] Grimm, *R.A.*, p. 328: "Zum zeichen der knechtschaft," pp. 702, 714; Guérard, *Polyptique d'Irminon*, Vol. I, p. 287; Wilda, p. 523: "Das sclavische abscheeren der haare," etc.

[3] Amira, Vol. II, p. 162.

possesses all the rigor of the old Roman *nexum*. For the debtor may be reduced to slavery permanently if he cannot pay or if he leaves the creditor without the latter's permission. Not only this, but if the debtor is unable to pay and nobody offers to assist him, or if he proves obstinate and refuses to work, the creditor may sell him for the amount of the debt. He may also cut off from the debtor's body what corresponds to the amount due, i.e., the creditor may mutilate his recalcitrant slave, presumably as an act of vengeance for the lost security, or he may even kill him as if he were a thief caught in the act.[1] The latter alternative reminds one of tit. 58 of the Salic code where the debtor has in the end to pay with his life.

*Lex Sal.*, 58: ". . . . et si eum in compositione nullus ad fidem tullerunt h. e. ut redimant de quod non persolvit, tunc de sua vita componat."

That these stages of slavery are in general preliminary, artificial, and fluctuating in character, not based on anything permanent,

[1] Gþl., c. 71; Fþl., x. 26; Maurer, *Schuldknechtschaft*, pp. 19, 20; Amira, Vol. II, pp. 157–58.

is easily seen from the fact that the state of servitude can be changed and annulled as rapidly as it was brought about. When the captive by a sudden turn of the fortune of war is rescued, he is as much a freeman as before. The slave through trade or the enslaved foreigner[1] may be liberated by a sum equal to his value in the opinion of his owner, and his rights as a freeman are not lessened in the smallest degree. Moreover, the one who is enslaved for offense or for debt may atone by a sufficiently large fine,[2] or by restoration of the stolen property,[3] or the value of it three times (three times three).[4] He may likewise be redeemed by a third person.[5] Norse law in some cases

[1] Schroeder, p. 1.

[2] *Eadweard and Guthrum's Laws*, c. 7, 1; Maurer, *Schuldknechtschaft*, pp. 29, 30. This fine it was not always possible to pay. Wilda may be right when he says that from criminals of this order the class of unfree was recruited (pp. 515, 896).

[3] *Aethelberht's Laws*, c. 6. [4] Wilda, p. 898, n. 5.

[5] Fþl., x. 39; Amira, Vol. I, p. 127: "Die unfreiheit des schuldknechtes ist keine unbedingte . . . . nur kann der schuldknecht sich nicht selbst auslösen. Abverdienen kann er sein schuld nicht. . . . ." In this respect the Swedish law is evidently more severe than the Norse or the English or any other law we know of.—Amira, Vol. II, p. 161.

even allows the enslaved debtor, as quondam freeman, to keep something of what he earns or of what otherwise may belong to him, such as the fines due him if anybody without cause molests him or his, thus enabling him to pay off his creditor. But this too must be looked upon as a later improvement of what was originally a strictly unfavorable condition.[1] If these things are done, if the amount forfeited is paid or security given for the payment of it, the temporary loss of freedom is of no account. The man or woman thus liberated recovers his or her natural rights. In the sole case of free men and women who associate with slaves and thus become enslaved themselves the law provides no relief unless it be that they buy their freedom as other slaves must do.[2]

[1] Gþl., c. 71; Amira, Vol. II, p. 159.

[2] As an exception may serve Gþl., c. 198, according to which the free woman who is enslaved because of unlawful relation to a slave can under circumstances free herself by paying a fine. It seems that here the aristocratic spirit is either too high for contamination or too low. It is no doubt safer to suppose the former.

The peculiar state of affairs on the Continent or in England, where the natural rights of freedom are ceded, and more or less direct slavery is accepted for the sake of certain benefits, such as protection, sure living, possession of land which could not otherwise be retained, has no correspondent in northern (Scandinavian and Icelandic) laws. It is the result of the fusion of conditions which came about in the conquest of Roman territory by Germans, and of the system of commendation with its succeeding subjection under the *munt* of a lord that had been in practice even before the conquest. This *munt*, in its severity among the Germans, at least, was certainly not mere patronage, but an absolute power over the life and property of the subject, who was accordingly in the position of a slave, even though he did not bear that name.[1] There are of course numerous instances—as reminiscences of Roman law—of enslavement through coming into possession of land, the free man stepping into the

[1] Heusler, *Institutionen*, Vol. I, pp. 121, 130; Pollock and Maitland, Vol. I, p. 12: "Freemen sometimes enslaved themselves in times of distress," etc.

living of a slave and in this way losing his liberty.

Thévenin, *Charte 157:* "Notum sit quod B. A. devenit servus . . . . pro eo quod ei concessimus emere quandam domum in burgo nostro, quam emit a quodam servo nostra nomina. . . . . Ipse et uxor ei . . . . et filius . . . . venerunt in parlatorium nostrum et ibi positis, ex more, iiiior denariis super capitibus suis."

This whole relation of quasi-servitude, however, seems to be connected with the beginning stages of serfdom rather than with slavery proper, inasmuch as the element of personal freedom at first ceded unconditionally is not permanently lost, but is retained in the later development of the relation, even though the economic subjection is the same.

### B. PERMANENT STATE

The second main point in our inquiry concerns the character of slavery when become permanent and the outgrowth of natural conditions. Society has now formed itself within certain limits of recognized law and

order; peace is restored; property once acquired remains in the hands of the owners, the slave, too, remains in the position created for him without any prospect of change. Indeed, his situation is continued indefinitely by the very fact that he has children born in this humiliating state, who are the justification for its continuance. In other words, "a race" of slaves is created by means of propagation. That this idea of propagation is really a fundamental principle, decisive and invincible in slavery, is seen from the tacit understanding that pervades history and laws alike, even if nothing is definitely stated. This principle may properly be formulated thus: "Slave is child born of slave," even if the father be free—a sentence as clear and comprehensive as if it were from the code of Justinian.

Gpl., c. 57 (concerning the identity of the slave-born): ". . . . he shall be the father of a child [of a slave] whom the mother declares to be. Now she accuses a slave of being the father. . . . . Now she accuses a free man, . . . . then that child is his slave-born child" (whom he can manumit by taking it to church before it is three years old

and there liberating it) (otherwise it remains his slave).[1]

"Slave is child born of slave." This had been agreed upon long before the laws were written; it was a social axiom that nobody needed to discuss. The appearance of the slave, his miserable clothing, his low stature, his often mutilated or deformed body, his branded and scarred skin, his short, bristly hair, and the insignia he bore, indicated not only his position, but equally often his type; and nobody questioned that whatever came of a slave must have characteristics that made association and assimilation with the free impossible.

What was, then, on the whole, the condition of the slave? It seems impossible to answer this question properly except by some reference to Roman law and custom.

The view has often and vigorously been put forth that the condition of the slave among Germanic races was essentially different from that among the Romans.[2] It is

[1] Cf. Schroeder, p. 46.

[2] There is no doubt that slavery became ameliorated among the Germanic races from *esclavage* to "servitude," as Guérard

said that the idea of individuality opened a new epoch in the history of civilization, and brought some benefit also to the slave. According to this opinion, the idea of individuality is manifested among the Germans in favorable contrast to the idea of the collegiality and the mechanical character of the state among the Romans. With the Germans even the slave had an individuality, and it was respected as such.

But is not this viewing the situation with eyes blinded with prejudice in favor of the German—seeing him as he came to be, not as he was?[1] The present study has given me

expresses himself (*Polyptique*, Vol. I, p. 277). This is due chiefly to Christianity, which impressed its commands more easily on the crude but more receptive German mind than on the skeptical Roman. One who wishes, however, to know what slavery was really like among the original Germans must take off, as best as he can, the layers which Christianity deposited, and gather the evidences of the warrior spirit and the strong pagan class feeling.

[1] Jastrow, the most penetrating of the German investigators in this field, seems to think differently from most other scholars. In fact, he emphasizes slavery (*esclavage*, not servitude) as existing even during the Carolingian period.—*Zur strafrechtlichen Stellung*, etc., p. 26, n. 2, as contrasted with Waitz, *Verfassungsgesch.*, Vol. II, p. 230, "Römische Gewohnheiten," etc.

some opportunity to compare Roman and Germanic institutions, and has furnished a curious commentary on the value of this belief in the more humane conception of the slave among the German races. In legal consideration for the slave, the views of the two races seem to coincide to a rather remarkable degree. One might think, indeed, that the similarity would be found especially in the Salic or the Burgundian laws, but it exists also in laws of the purest Germanic origin, such as the Scandinavian or the old English laws.[1]

If we peruse the Roman code with its strictly logical development of the idea of slavery and compare each important statement with corresponding instances in Germanic laws of almost all kinds, we find little, if any, difference in meaning. The main idea is very much the same, even if the Roman is a system perfected to the utmost nicety in reasoning out the final conclusion, while the Germanic is only a rough draft, as it were, less exact in wording—a preliminary effort toward specifying in definite

[1] Waitz, *op. cit.*

terms a relation that had long been a matter of practical life. If there is any difference, it is temperamental, manifested in carrying out the letter of the law, rather than juridical, in establishing the line of conduct. But upon all this the evidence of the sources is, after all, so meager that it is more a suggestion than a certainty which we are able to offer.[1]

The condition of the slave under Germanic law may be condensed into sentences such as these:

1. The slave is an article of property.
2. The slave has no personal rights.
3. His existence is vested in that of his master.
4. Aside from his relation to his master, the slave has no place in society.

That is, the laws do not say these things in so many words; they do not put down the relation in such plain terms as the Roman laws do; "servitus est dominio alterius subjicitur," i.e., the slave is a being who, instead of belonging to himself, is sub-

[1] Pollock and Maitland, Vol. I, p. 2: "They [the laws] are intelligible only when they are taken as part of a whole," etc.

jected by right of ownership to another man; but the words the Germanic laws use, and the meanings these convey, express exactly the same thing.

1. The slave in the severest form of servitude—and it is with this that we are at present dealing—is but a thing that can be owned; and his relation is indicated in terms which leave no doubt as to absolute ownership.[1] When the laws place the slave on the level of cattle and other mobilia, they are just as comprehensible as the Latin expression *res*, and the conclusion to be drawn is equally simple and exhaustive.[2] In Norse law we have the expression *fé* concerning slave in the sense of chattel (Lat. *pecunia*, as distinguished from *mancipium*);[3] also that a slave is a man's man

[1] Amira, Vol. I, p. 736: "Es gehören aber zu den kostbarkeiten gold, silber, unfreie leute," etc.

[2] *Lex Sal.*, 47: "Si quis servum aut caballum aut boven," etc.; likewise 10, 1; *Lex Rib.*, 72, 1, Cham. 25; *Lex Fris.*, tit. iv. 1, 2.

[3] Fþl., v. 18: "En þat scal vera halfgillt fé er fè spillir horns, oc hofs, oc þraels"; Fritzner, *Ordbog;* Möbius, *Glossar;* cf. the expression of American slaveholders: "A menial is not a man."

(*mans-maðr*) in the double sense of being his slave and belonging to his household.[1] Words such as *skalks*, *þeow*, *þraell*, *sveinn* (Gþl., c. 69, "Um ábyrgð sveins mans"), and others express servitude of the lowest character with an emphasis on the meanness, contemptible nature, of the individual which has maintained itself even to the present day.[2] Since he belongs to the movables, a slave can as well be given away as sold or inherited or used as payments of debt (fines).

Amira, Vol. I, p. 465: "Unfreie leute die zur mitgift einer frau gehört haben und vom manne verkauft oder bei ihm ausgelöst," etc.; p. 723: "Unfreie sind sachen. Daher können tötung, verstümmelung, verwundung eines unfreien nur als sachen-beschädigung," etc.; Grimm, *R.A.*, pp. 342–43: Die knechte sind sachen dem herrn eigenthümlich . . . . er darf sie wie thiere behandeln; . . . . den knecht kann der herr gleich anderer waare verkaufen, es versteht sich von

[1] Gþl., c. 20: "Nu ef etr man mans kjót a freadögum," etc.; c. 22: "En ef spillir man manna barne sinu heiðnu eða christnu," etc.; Fritzner, *Ordbog;* Möbius, *Glossar.*

[2] Grimm, *R.A.*, pp. 301–4; cf. the present use of "villain."

selbst, dass der knecht wie verkauft auch verpfändet, verschenkt, vertauscht," etc.[1]

The slaves of a household may be divided or held in common like other property.

*Laws of Eadgar*, i. 2, 1: ". . . . the rest to be divided in two, half to the hundred, half to the lord, except the servants, those the lord shall have, all of them."[2]

And the slave himself can be divided, i.e., he works some time for one master, some time for another.[3] He can also be let or hired as well as used as security for debt (other than fines).[4] Roman jurisprudence advances the view that the fugitive slave commits a theft, and allows the master to

[1] Donations of slaves to the church: Tardif, *Monuments historiques*, I^re^ part, *Cartons d. Rois*, No. 90 (790 A.D.). Nos. 93 (794 A.D.), 182, 227, 321, 562.

[2] Grimm, *R.A.*, p. 343: "Theilung der kinder zwischen mehrere herrn"; Amira, Vol. I, p. 296.

[3] Jastrow, p. 13, n. 5; Geffcken, *Lex Sal.*, 35, 1, and p. 150.

[4] Gþl., c. 223: "Giallda svena þá alla er heima ero alnar"; c. 274, 69: "Now a man hires another man's slave," etc.; Grimm, *R.A.*, 343: "Eine ancilla ist der preis für pferd, schild, und lanze"; Coulanges, *Institutions* (*L'Invasion germanique*), p. 82: "Proprietarius servo cujus usufructus ad alium pertinet."

pursue him.[1] Germanic law, too, admits this right:

*Aethelstan's Laws*, vi. 6, 3: "But if the slave stole [himself] away[2] . . . ."; *Leg. Lang., Roth.*, c. 281: ". . . . the one who gives a fugitive slave food and keeps him more than a day shall pay his value to the master";

and whoever brings back the fugitive may expect a reward.[3] The man that kills the slave of another shall make good the loss by paying the price of the slave. In Swedish law this is half the value of a cow or of a horse or 3 marks in money.[4] But there are instances of a slave being valued higher.

Amira, Vol. I, p. 464: ". . . . 8 mark für den im hause geboren unfreien, 3½ mark sollen (nach jünger redaktion von Westmannalagen) für den gemeinen unfreien gegeben werden, 7 mark aber wenn einer,

[1] Coulanges, p. 84: "Servum fugitivum sui furtum facere"; *Digest*, xlvii. 2, 60; Cod. Just., vi. 1, 1.

[2] See Maurer, *Kr. Überschau*, Vol. I, p. 410; cf. Gþl., c. 71, where the enslaved debtor "steals" away and causes loss to creditor.

[3] Gþl., c. 68; cf. Gþl., c. 40; Grimm, *R.A.*, p. 345, 5: "Der knecht darf sich *nicht* von dem grund und boden entfernen. . . . . Ire debet quoque sibi jubatur."

[4] Amira, Vol. I, p. 395: "Drei mark silber . . . , werth betrag des unfreien."

der des bauern schlüssel führt, im hof erschlagen wird"; further, pp. 483, 656.

And it is most common to prize him according to his usefulness.

See *Lex Sal.*, x. Add. 4; cf. Gþl., c. 182: "Nu drepr maðr þrael annars mannz, þa scal hann boeta aptr sem men meta noectan hann." "Then he [the guilty party] shall pay according to what men value him [the slave] naked." Here it is the slave rather than his occupation which determines the price.

Hence the value varies exceedingly.[1]

The fine for injuring a slave is represented by the value of the slave, not by any fraction of a wergeld, as would be the case with a freeman. In Norse law the lord is to have his loss refunded if the slave is rendered useless by carelessness or mutilation, or if he is murdered.

Gþl., c. 69: "Now someone borrows the slave of another, then he shall be responsible that the slave be not sent across a dangerous river or ice, or where bears lie, or on dangerous mountains, or on

[1] With the Franks the ordinary slave is worth from 12 to 15 sol.; a laborer or artisan, 25 to 40; a blacksmith, 50; an *expeditionalis*, 55; a silversmith, 100; a goldsmith, 150; see Guérard, Vol. I, p. 295; Wilda, p. 351.

the sea in storm, or into any other dangerous place. And if the slave should perish thus, . . . . the man who borrowed him shall pay for him to the owner. . . . . Now the slave lies sick or wounded, then he shall be allowed to lie thus a week, later he shall be brought to the owner," etc.

*Ibid.*, c. 215: "All, thegn or thrall, shall have compensation equally for wounds. And if anybody wounds another man's slave, he shall maintain that slave while ill and pay the lord for the work the slave ought to be doing and the physician besides."[1]

When buying a slave the master must be protected by the presence of witnesses from getting one with hidden faults.

Gþl., c. 57: ". . . . kaupa saman lagakaupi oc lyritar" (lawful purchase in the presence of three witnesses).

Fþl., v. 41: "Ef maðr kaupa man at manne," etc. (epilepsy, cramps, and rheumatism, owing

[1] Wilda, p. 351: "Verstümmelt man eines mannes sclaven . . . . so erstatte man ihn wieder mit seinem vollen werthe oder gebe einen anderen dafür" (Swedish law *OG. Vap.*, m. c. 16, sec. 2); Amira, Vol. I, p. 461: "Eines fremden unfreien oder ein fremdes thier das man absichtlich oder von ungefähr verstümmelt hat, ersetzt man durch lieferung eines unverstümmelten, wogegen man selbst das verstümmelte erhält," etc.; *ibid.*, p. 656: "7 mark váþabot zahlt der entleiher eines unfreien, wenn er ihn zum holzfällen benützt und der unfreie dabei seinen tod gefunden hat" (Upl., Mb. 6, sec. 4, translated fully on p. 483, *g*).

to poor food and hard work and exposure, seem to have been common ailments among the slaves, which the purchaser had to look out for); Wilda, p. 202: ". . . . für die missethaten des sclaven wolle er (Gunnar) keine busse geben, weil ihm der gegner beim verkauf desselben seine fehler verborgen habe" (*Njálssaga*).[1]

The sale must be a bona fide sale, otherwise it is void.[2] From one to three days, six days, two weeks, one month, two months, or a whole year (Amira, Vol. I, p. 570), seems to be the time for trial allowed the purchaser.[3]

2. The slave has no personal rights, i.e., (*a*) he is no equal; (*b*) he cannot defend himself; (*c*) the difference between him and the

[1] Amira, Vol. I, p. 284: ". . . . der kauf gewisser sachen, wenn er nicht auf offener strasse geschieht dedarf des 'vitni' zu seiner form. Diese sachen sind unfreie knechte, vieh mit horn oder huf"; *ibid.*, p. 569: "Nach dem kauf eines unfreien hingegen darf der käufer innerhalb einer sechstägigen probefrist ohne entgelt das geschäft rückgängig machen."

[2] *Marculf.*, Vol. II, p. 22; *Form. Sirmond.*, 9; *Lex Bajuw.*, tit. xv. sec. 9 (cf. Gþl., c. 44); *Form. Bignon.* 3 (and 5).

[3] Fþl., v. 41, speaks of "niu ár" (nine years), which is to be understood as a lapsus for "ný hit naesta," which means the next moon, i.e., within a month; see Amira, Vol. II, p. 700, n. 2.

freeman is enormous; (*d*) for whatever he may be inclined or be supposed to assume he can be peremptorily punished. These restrictions are, of course, most plainly shown in the relation of the slave to the free.[1] Class-feeling or race-difference is very marked in all laws;[2] it strikes the freeman as well as the slave. The free man or woman who joins a slave is enslaved, and his or her belongings go to the lord of the slave.[3] If a slave accuses a freeman of the theft he has himself committed, he is to die.

Gþl., c. 262: "Nu kenner maðr þraele manns herlennskum," etc. "Now someone accuses a slave born in this country of having committed theft . . . . if the slave is tortured . . . . [and] declares

[1] "Überhaupt giebt es nur zwei stände: den volkfreien (folkfraels) welcher rechtsgenosse ist und den unfreien welcher landrechts und wergelds darbt."—Amira, *Swedisches Obligationenrecht*, p. 19. This statement, although not corresponding to the conditions of the rest of Germanic society (where the *colonus* and the *litus* appear as intermediate layers), holds good everywhere in regard to the slave; see Grimm, *R.A.*, p. 349, F. 1–3.

[2] *Lex Rib.*, tit. vii and viii give one instance among a thousand.

[3] *Lex Sal.*, tit. 13, 8 and 9; 25, 5 and 6; c. ii. 1; c. ix. 3 ("Ludo vici Pii").

a freeman to be the thief, the slave shall be kept as security . . . . but if the freeman can free himself the slave shall be killed.

If a freeman is murdered or wounded by a slave, even though unintentionally, the slave is not excused. To the Germanic mind the deed done is sufficient to condemn the doer. In this particular, in fact, the slave is not worse off than is the freeman.[1] If a slave beats a freeman, he is to die,[2] unless the lord can buy him free.

Gþl., c. 204: "Ef þraell lystr mann frjálsan," etc. "If a slave strikes a freeman, his lord shall compensate the one who is struck, or he shall make the slave an outlaw."

But if a freeman beats a slave, it is of no consequence, except in so far as it should make the slave unable to perform his customary labor.

[1] Amira, Vol. I, p. 707, n. 8. The question how ordinarily it is possible for a slave to inflict a wound is to some extent solved by Gþl., c. 56, which ordains that the slave may manage no purchase except that of his knife; this necessary tool was his; if it became useless, he could buy himself a new one.

[2] Amira, Vol. I, p. 716 (cf. p. 394).

*Lex Sal.*, 35, 3, 1: "Si quis servum alienum batterit et ei super noctes 40 opera sua tricaverit, sol. 1 et ½ culpab."; also *Lex Rib.*, xix. 1.

If a slave kills a freeman, he is given over to the vengeance of the relatives.[1] The abusive language of a slave cannot injure anybody's honor. If his abuse becomes offensive, the slave must be looked on only as the mouthpiece of the lord.[2]

The slave is no member of the community, and cannot be outlawed, otherwise he would be only too glad to break the peace, "weil die landflüchtigkeit ihm die freiheit gegeben haben würde" (Wilda, p. 654).[3] In order to bring a slave who has committed a crime to confess, torture is permissible.[4]

[1] *Lex Sal.*, 35, 5.

[2] Amira, Vol. I, p. 717, B; cf., *Edict. Theod.*, 48, where freedmen and slaves may not give evidence against their lords or patrons in court; but see *Leg. Visig.*, vi. 4, 7.

[3] Amira, Vol. I, p. 392. Cf. with the foregoing Gþl., c. 204, which belongs decidedly to a later period, when the slave is being made individually responsible for his acts, and suffers punishment as does the freeman. See next main division.

[4] Jastrow, p. 16, n. 20. Whipping to an extreme degree seems to have been the most common torture, but the sources show that there were other kinds as well. Guérard, Vol. I, p. 313, n. 11: "C'était à l'accusateur à fournir le chevalet, les

Gþl., c. 262; Fþp., x. 40: ". . . . en hann pína hann til sannar sögur." ". . . . torture him till he tells the truth."

That the slave is a desperate part of society becomes only too clear from sentences such as these. All low deeds are ascribed to the slave, because a permanent evil intent must needs be his true nature. The old English name for slave, *þéow*, has close affinity to the word expressing theft, *þéof*.

Gþl., c. 154: "Nu ganga menn fiórer," etc. "Now four men walk on the road and one commits manslaughter and kills his comrade, then he is guilty who says he is. But if a slave is with them, then he is the killer of that man, if they say so"; *ibid.*, c. 255: "En ef þeirra er hvargi til þá er bryti þiófr at," etc. "But if none of these [freeborn members of the household by whom the stolen object might be concealed] is at home, then the foreman of the slaves is the thief."[1]

verges, de la grosseur du petit doigt, ainsi que les autres instruments de torture en usage" (*Lex Sal.*, tit. 40, 1 and 6); Grimm, *R.A.*, c. iii. B.

[1] Wilda, p. 860: ". . . . gegen besonders gehässige und gefährliche beeinträchtigungen, die vorzugsweise von geringer geachteten personen, unfreien, besitzund heimatlosen geübt zu werden pflegten, schutz zu verschaffen"; Grimm, *R.A.*, p. 303: "Indessen hat schalk den heutigen sinn eines losen, bösen, schlauen menschen."

When we observe how the slave is punished in a way far worse than death, we see that it is inevitable that he should become absolutely brutalized and the lowest of all human beings, the scoundrel *par excellence.*[1] During this period of uncompromising severity the slave's personality is ignored, is looked on as non-existent, bound up with that of his master; and thus, inasmuch as the slave has no personal rights, he has likewise no obligations; he cannot be considered responsible for his doings. As a matter of course, his master is responsible for him, i.e., the slave exists only by and in his master.

*Lex Angl.*, 16: "Omne damnum quod servus fecerit dominus emendet."[2]

Roman and German alike look on the slave as irresponsible;[3] the slave is a being entirely too powerless to do anything independently.

"A slave shall not be called the bane of any man."—Wg. i. Md. 4, in Wilda, p. 656; Amira, Vol. I, p. 394.

[1] See the frequent mention of whipping. The slave must often have been beaten to death, since it is impossible that he should stand 240 to 300 blows (Wilda, pp. 510–14).

[2] Jastrow, pp. 10, 14. [3] Coulanges, p. 85; Jastrow, p. 12.

The slave is only an instrument in the hands of the free.

Gþl., c. 261: "Nu stela þeir stuld," etc. "Now a freeman and a slave steal together, then he is the thief who is free, but the slave shall not be counted, for he steals alone who steals with another man's slave."[1]

The slave is an animal; inasmuch as he has no rights, he has likewise no guilt, the only one who holds a responsible position is the freeman, the master and lord. The law always refers to him as the only one who can give satisfaction.

*Lex Sal.*, tit. 12, 2: "Domino vero servi qui furtum fecit capitale et delaturam requirenti restituat." *Lex Sal.* (ed. Walter), xi. 1: "Quicquid servus. . . . . iubente domino perpetraverit, dominus emendet"; and 2: "Not even in case the slave runs away can the lord be looked upon as free from obligation."[2]

Roman law puts this equally definitely; according to it, the slave is virtually nobody;

[1] Wilda, pp. 613, 632, 633; Amira, Vol. I, p. 392: ". . . . der unfreie überhaupt nicht selbständig handelt, sondern werkzeug des freien ist."

[2] He must at least pay for the damage the slave has done. If the lord in order to escape responsibility sells the slave, the sale is void (*Leg. Visig.*, iv. 18).

if he commits a crime it is his master who is made responsible; a crime committed against a slave justifies the master in making a complaint and demanding indemnity.

*Digest*, iv. 5, 3: ". . . . quia servile caput nullum jus habet"; ix. 4, 2: ". . . . dominus suo nomine tenetur, non servi."[1]

As the master takes all responsibility for the actions of the slave, so he possesses all right to punish him.[2] This right to punish he yields to the offended party, if the latter can only thus be satisfied.[3] As for the kinds of punishment, see Wilda, pp. 509–15. The master is omnipotent; no power can interfere.[4] Whatever a master does to his slave cannot be counted against him.

Fþl., v. 20: "If a man kills his slave ["drepr þrael sinn til dauðs"] then he shall make it known during

[1] Coulanges, p. 87; Mommsen, *Römisches Strafrecht*, p. 79: "Es hat eine epoche gegehen," etc.

[2] I am aware of no particular statement to this effect, but the jurisdiction of the lord is the outcome of this proprietorship.

[3] In this right of the offended party to punish lies the germ of a social relation for the slave, his acquiring a personality.

[4] Coulanges, *Roman Law*, p. 87: "Ces règles du vieux droit romain . . . . avaient pour consequence naturelle," etc.

that same day, and not be responsible to anybody except God"; Gþl., c. 182: "Now a man is accused of having killed his slave, . . . . the act shall be made known, otherwise it is murder" (in this case it is punished); *Aelfred's Laws*, Introd., p. 17: "If a man strikes his own slave (male or female), who does not die that same day, but lives two or more days, then that man is not quite so guilty, because it was his own property."

The position of the master as the one between society and the slave is so marked that it is only natural if at this point the fate of the slave and the action of the law cease to have any connection with each other.[1]

Thus the foregoing sentences lead necessarily to the conclusion:

3. Outside of his relation to his master the slave has no place in society. And if he is punishable for crimes that the master cannot or will not come up for, the outcome must be death.

Gþl., c. 163: "Nu er sveini manns víg kent," etc. "Now someone's slave is known to have

[1] Even the church does not always see fit to interfere (Guérard, Vol. I, p. 312, n. 10). The church causes slavery to be decreed as punishment for (canonically) illicit marriages (*Leg. Alamann.*, c. 39; *Lex Bajuw.*, vi. 1, 3).

committed manslaughter [manslaughter being the confessed killing of a man, murder the secret killing], then the lord shall protect him with such oath as he protects himself with. If the oath falls, the lord himself becomes an outlaw; and if he will not give oath for the slave, he will have to give him up"; Wilda, p. 501, n. 2; *OG. Dc.*, 13: "If a lord will not pay for the slave who has killed a freeman, then a branch of oak shall be taken and bound around the neck of the slave and he be hung above the man's door."

This relation is, of course, one of absolute submission on the part of the slave and certain all-encompassing rights on the part of the master. Any case of disobedience or treachery meets with no pardon; absolute power over life and death is the prerogative with which every society endows the master in regard to his household and his slaves.[1]

[1] Grimm, *R.A.*, p. 30: "Der leibeigene knecht im strengsten sinn muss zu dem willen seines herrn sogleich bereit sein"; Wilda, p. 575: "Die Graugans [Iceland] setzte den höchsten preis auf den kopf eines sclaven oder eines mannes der sich um eine schuld abzudienen zu eigen gemacht und durch tödtung seines herrn, seiner leiblichen oder pflegekinder friedlos geworden. Nach swedischem gesetz [Uplandslag] ein dienstmann sowohl als ein freier oder unfreier knecht, der seinen herrn etc. tödtet, soll gerädert werden und all sein gut verwirkt haben."

The law seems to know no obligation of the master to his slave. That is entirely a matter of private concern and self-interest with the master; as is also the necessity for the slave to get into his master's good graces a matter of self-preservation in which the law can take no interest. As far as historical record is concerned, there is rather an impenetrable veil over the private relation of the slave to his master; and perhaps it is better so. An instance only now and then throws a faint light upon the subject.

A most important connection between the master and the slave exists in the fact of the slave's performing a certain amount of work in the house or on the farm of the master. In the northern laws the nature of this work is nowhere indicated. In the Salic law, however, a whole series of occupations are mentioned wherein the slaves make themselves useful. Slaves are keepers of vineyards, they are millers, shepherds, hunters, as well as smiths, carpenters, grooms, and house-servants of the lord. It is the ordinary servant's and tenant's labor that they

performed, though some of them must have had better if more responsible situations than others, e.g., the goldsmiths, waiters, and overseers in cellar and kitchen.[1] In northern law only the name exists to characterize this kind of labor (*verk*), while another kind seems to have been reserved for the benefit of the slave (*orka*). The laws give no evidence of what the *orka* was or how it corresponded with the work due to the master. To judge from a sentence in Norse law (Gþl., c. 57), the *orka* was given the slave with a view to provide for the bringing up of his children, which perhaps was the original meaning of the slave's *peculium*. Even in the modern Norwegian language *orke* means heavy, exhausting labor.[2] On the Continent the Roman *peculium* must have found its imitation among the Germans. The German slave too was settled on land (see Tacitus, although here *liti* may be meant rather than slaves), not in the sense

[1] Grimm, *R.A.*, pp. 350–58.

[2] Cf. *Leg. Alamann.*, tit. xxii; *Lex Bajuw.*, tit. i. c. 13 (14, ed. Walter).

of the Roman *mancipium* who followed the land, but had more a lifelong tenure. As far as I have been able to discover, the laws never mention this matter; but certain statements about the slave's ability to pay for himself (to which I shall refer later) seem necessarily to point to this solution of this much-vexed question. To settle slaves on land was the easiest way of maintaining a large stock of them, or rather of making them maintain themselves. Besides, without some mode of earning how could the slave ever have come into the position of buying himself free? We know that the church from the beginning settled slaves on her land: nay, that slaves and serfs came to have so much to dispose of that they could build and endow churches and chapels of their own. But how all this was managed, and how much the slave could with some security call his own, will perhaps forever remain an unexplored mystery.

In case of large estates the slave had to pay certain dues to his master of some portion or of the whole of the land which he was

tilling.[1] Norse law gives no hint of what these dues were; it is not even possible to make out from the laws whether such tenure by slaves was general or not. In Sweden, however, such tenure seems to have been customary; in Denmark it appears more than likely to have been so; and we may thus be permitted to consider it a common trait of North Germanic economic life.[2]

[1] Waitz, Vol. I, p. 226: "Knechte drei tage der woche für den herrn," etc.; Grimm, *R.A.*, pp. 358–96; Thévenin, *Charte 74.*

[2] Amira, Vol. I, p. 270, n. 10; p. 523, n. 5.

## CHAPTER III

### RESTITUTION; THE UPWARD COURSE; AMELIORATION OF SLAVERY

The rotary movement of civilization, wherein by degrees the lower layers of society slowly work their way to the surface, and vice versa, brings change also into the state of the slave. At first this change is hardly to be counted as an improvement in the actual condition of slaves; but inasmuch as it gave them a different legal status, it did in time lead to a real amelioration. The effects of this slow but important movement are, of course, shown in the last stage of the steep ascent where the slave is finally delivered from his bondage. But this final result (except in extraordinary cases) is as yet far off.

On the Continent political revolutions were the cause of much change. The unsettled condition of all things during and directly after the conquest opened ways for the slave to improve his situation. An

upheaval of that kind is likely to be felt even down in the lowest layer of society; for during such a time old stipulations can be disregarded and new ones made without much fear of punishment by the legal authorities. At the arrival of the Barbarians those who had least to expect from their present lords were the ones who had least to fear from the newcomers, their state being sufficiently miserable as it was. They too were the ones who most easily submitted to the new rule. In the clash of political and national differences, the slaves had a momentary chance to revolve into another sphere. Thousands of fugitives probably joined the conquerors and won freedom and position in battle. That they did not all do so must have been due to German[1] rather than to Roman antipathy. On the other hand, while they who had been below rose, they who had hitherto had the command sank. During the centuries which

[1] Those that were of German origin and had recently been captured might count upon a welcome; whereas others, whose loyalty was of a more doubtful character, would receive less of a welcome.

followed the Germanic conquests Roman provincials of noble birth were reduced to servants and slaves,[1] while their former inferiors were entrusted with position and power.

This movement, which was permanent on the Continent, had no parallel in the Middle Ages in the Germanic North. Of the condition of the slave in England before and after the conquest by the Angles and Saxons, we know next to nothing. In the Scandinavian peninsula and Denmark the migration and conquest, if such there was, must have taken place so many centuries before that everything had become settled and the past obliterated. That the slaves when mentioned are often characterized as dark-haired, small, and homely[2] is perhaps no mere expression of contempt, but a national trait, since they must have been of either Finnish[3]

[1] Gregory of Tours, iii. 15.

[2] Svartr (Swart) as a slave's name is mentioned at least twice; Busti (Bristle) is the name of another; Finn the Little, "the smallest and swiftest of foot," etc.

[3] Finnish from the original or neighboring population, Celtic from the coast of Ireland or France where the Vikings raided.

or Celtic origin. They are sometimes spoken of as enjoying confidence because of cleverness, readiness, swiftness of movement;[1] and this might fit either race.

The general condition of the slave in the North has already been indicated, at least as far as the laws define. To suppose that the letter of the law was in every case an image of life would perhaps be profoundly unjust to humanity.[2] Bad as it must have been, there were probably many and prominent exceptions in actual life to the harshness of the laws. Otherwise the two races —that of the master and that of the slave— must have lived in a contest for life or death which would end in the extermination of at

[1] *Egils Saga*, c. 83: "Maðr sá var med þorsteini er Iri het hverjum manni fóthvatari [swift of foot] ok allra manna skygnastr [sharpsighted]."

[2] It (the law) presents in many instances a blending of old and new; the past preserved from piety and showing the utmost rigor of custom, the present suggesting later more expansive views. Sometimes and more generally the new predominates, sometimes the old; while at times the two are so closely interwoven that though we know the law is not and seldom can be a homogeneous structure, always containing traces of the past, nevertheless there is little or nothing left by which to distinguish what is old and what is new.

least one of them. Tacitus (*Germania*, c. 25) in his famous passage, speaking of the lenience of the ancient Germans in dealing with their slaves, says that they treated them neither to chain nor to forced labor and killed them rather in a fit of anger[1] than from inclination toward cruelty. Tacitus has here with profound insight given the character of the Barbarian as compared with that of the Roman. Cruelty and indifference to suffering are even today a characteristic of southern nations. It is certain that on the Continent the Germans were considered liberators rather than oppressors by the tormented lower and lowest classes.[2] The disposition of the German (Scandinavian and all) toward his slave was—at least under ordinary circumstances—one of fair appreciation, if he proved himself a valuable servant.

[1] Cf. *Egils Saga*, c. 40: "Þorgerdr Brák was the name of a female slave of Skallagrim . . . ." whom Skallagrim kills. Egil again kills the dearest of Skallagrim's workmen in vengeance for her death. Both deeds are done in a fit of uncontrollable wrath, or rather rage.

[2] Perhaps mainly because they were newcomers who did not regard slavery as an economic institution which must be kept going at any cost.

The slave was treated well; if he impressed his master favorably, he was even recognized as being bright, capable, useful.[1] And yet the contempt for the life of a defenseless thing frequently got the better of the good-humored warrior, and this defenselessness remained, no doubt, in law and in life alike the desired result of the judicial position of the slave and was his main and greatest misfortune. It may be that private arbitrariness and violence when they occurred were but repetitions of worse earlier conditions, which had passed away except among certain high-handed aristocrats. It is possible, too, that in other circles of more exalted power and perhaps more exalted views this wilfulness yielded at times to generous motives and offered the slave an unrivaled opportunity for a better station in life. Certain it is that, apart from Christianity, nothing contributed so powerfully to a more humane view of the position of the slave in ancient Ger-

[1] *Laxdaela Saga*, c. 11: "Þordr owned a thrall who was called Ásgautr. He was prominent in regard to qualities and able with his hands [?], and although he was called thrall, few might be his equals though they were called free."

manic society as the establishment of kingship. The main, and often the only, chance for the slave lay in his connection[1] with the supreme officer of the community, the one who alone could claim exalted power as his birthright. This was a chance of peculiarly undefined and personal character, but was present and active with similar results everywhere. The king, possessor of the highest, most untrammeled power, was the natural protector of every abused individual within his realm: this he was *bound* to be in order to give his position the superiority and moral force which it needed among wilful and self-seeking family chieftains. To his *mund*, at least in its final development, anybody, free or thrall, might appeal (though at first, of course, it applied only to people of free birth). Even if the king's power could not and would not break the bondage of the

[1] *Ynglinga Saga* (*Heimskringla*), c. 30: "Egil . . . . was king in Sweden after his father, . . . . he had a thrall hight Tunni who had been with Aun the Old and was his treasurer. But now when Egil became king, he set Tunni amid the other thralls; and this he took exceedingly ill, and ran away, and many other thralls with him" (Morris' tr.).

slave-born, or interfere with the jurisdiction of the master, the king could (under circumstances) recommend a milder treatment and give an example to that effect himself. There are few instances of the king having put slaves to death except for treachery against their own masters,[1] which was looked upon as unpardonable.

As an owner of great property and holder of supreme rights over men's fortunes and lives, the king himself had many slaves come to him as gifts or booty or because of offense, stocking his farms as a necessary inventory. All such slaves, because of their owner's power and wealth, enjoyed better circumstances and were of higher value than those of others. This condition may not have existed completely until the king's rights became definitely developed, largely through the example set by the church; but the elements of it were inherent even in the idea of kingship. The Frankish *puer regis* or *ministerialis*, the king's slave as compared with the slaves of others, was a

[1] *Saga Olafs Trygvasonar* (*Heimskringla*), c. 55.

rather privileged person, protected by law, equaling the freeman[1] in regard to smaller injuries, in regard to the greater being on a level with the freedman or the *litus*.[2] The other slaves, *servi casati*, *mancipia*, *fiscalini* of the royal domain—which, at least as far as the Frankish empire was concerned, represented the greatest complex of tilled and untilled land and the largest mass of unfree labor of the period—these, even if on a lower social plane, enjoyed the same improved conditions. They were naturally less driven for the sake of profit than were those in the ordinary landowner's possession. The royal domain was too vast to be managed with close economy. Charles the Great, indeed, made an elaborate attempt to establish a system in the output of produce so that nothing might go to waste, but the kings before or after him took no pains thus to supervise in detail, and free and unfree alike grew well-to-do on the king's plenty.

Further, the king could free those who, because of offense, had become enslaved and

[1] *Lex Rib.*, 10, 2. [2] *Lex Sal.*, c. i. 1.

needed a patron to redeem them; although it is doubtful whether he ever found it wise to tamper with the working of the law, even if it were an act of mercy. Finally, by the very reason of his position, the king could grant to his slaves offices which even freemen might feel honored in accepting, although they did not always feel honored in obeying.[1] Being a lord superior, a more independent, better equipped, and more highly regarded official than the chieftain, the king could invest his humble slave with some of his own luster, and could confer upon that servant dignities not only of the royal household, but of the administration of the realm which would make the despised slave not only the equal, but the superior of the free followers. The Merovingian *sacebaro*, the royal financial agent,[2] and even the *graf* were no doubt often unfree,

[1] Cf. the incident in *Saga Olafs hins Helga*, c. 122, where Erling says: "But this shall I deem a troublous matter, to lout before Seal-Thorir, who is thrall-born through all his kin, although he be now thy steward, or to bow to others such as are his peers or kindred, although thou lay honor on them"; likewise c. 237, where the king says: ". . . . whereas I have raised thee up to might from a little man." Cf. c. 148 (Morris' tr.).

[2] *Lex Sal.*, tit. 54.

invested with considerable power. In these cases, however, it seems likely that Roman imperial administration was influential as a model.

Yet, while this liberality on the part of the king had the aspect of generosity as compared with the actions of most other lords, we may readily suppose that the motive was not generosity but self-interest, inasmuch as a prospect of elevation and reward of this kind would spur the servant to far greater effort. Those positions which later became sources of the most extensive power to the magnates of the realm, e.g., *majordomus*, *mareskalkus*, marshal, etc., were at first identified only with the king's slaves, but by acts of grace and royal backing they became by degrees places of importance.[1] These servants being at first absolutely at the king's bidding, he secured implicit obedience by choosing and supporting them and more real power than if he had altogether employed freeborn men. There is no doubt

[1] Gregory of Tours, iv. 46 (Andarchius); iv. 51 (Charegisil); v. 48 (Leudast).

that the use of slaves or quondam slaves as *comites*, officers of the court, and royal commissioners was one of the causes—if only a minor one—of the rapid growth of Merovingian power into one of almost despotic nature.

Moreover, whatever indirect political results this elevation of the slave may have brought about, it caused also something of a social revolution of ideas. Because of the king's authority, it was necessary to hold the slave who represented him in higher esteem than would otherwise have been possible. Even legally the king's schalk was the equal of the free.[1] That female slaves by the same arbitrariness of power might be elevated to a position of queen was quite in keeping with the same idea. It is supposed, however, that in most cases this slave was originally of free birth, reduced to slavery by misfortune or for other reasons, the king's *ambátt*, as so often occurs in the tales of the sagas.[2] The child

[1] Waitz, Vol. I, p. 228.

[2] *Saga Olafs hins Helga*, c. 131: "There was a woman hight Alfhild, who was called king's-bondmaid, though she was come of good stock"; *Saga Haralds hins Hárf.*, c. 40: ". . . . Good

of such a union might—if he were recognized by his father—become the heir of the kingdom, so that through the backdoor of illegitimate connection the slave might come into even greater honor and dignity.[1] That this movement, as far as the general slave was concerned, was nothing but a brilliant exception; that the slave, when still a slave, remained in every case at the mercy of his master who could in an instant throw the creature of his power down as far as he had raised him, shows that this means of ameliorating the state of the slave was as fluctuating and uncertain as was the reduction to slavery of the freeborn. It is reasonable but not always warranted by the sources to suppose that the act of liberation sometimes preceded elevation into a higher sphere. When this did not occur beforehand, however, it is

kin she had. . . . . She was called king's-bondwoman; for in those days there were many of good blood both men and women that owed homage to the king" (Morris' tr.); Gregory of Tours, iv. 26; v. 17 (Queen Austrichilde), n. 1; c. v. 20, 49.

[1] Gregory of Tours, iv. 25; v. 20: ". . . . ignorans, quod, praetermissis nunc generibus feminarum, regis vocitantur liberi, qui de regibus fuerant procreati" (ed. Omont).

possible that the slave's unfortunate position aroused more interest because of his conspicuousness in his high office. But on the other hand, his behavior and arrogance as representative of royal prerogative must just as often have made him more utterly despised and the royal power appear more misguided in its choice than ever. And inasmuch as the royal power in general grew and the power of the people sank there was some cause for disquietude.

Another stronghold of hope for the slave was the power of the Roman Catholic church. What the king represented within the political sphere the bishop represented within the moral. There is no doubt that, but for the constant good offices of the church through her ministers, the improvement in the condition of the slave would have been of far slower growth.[1] The bishop, of

[1] The church pronounced excommunication and two years' penance on the lord who killed his slave without the knowledge of the "judge": *Concil. Agath.*, a. 506. c. 62; Hefele, *Conciliengesch.*, II, sec. 222; *Concil. Epaon.*, a. 517, c. 34: "Si quis servum proprium sine conscientia iudicis occiderit, excommunicationem biennii effusionem sanguinis expiavit"; Hefele, *Concieliengesch.*, Vol. II, p. 685; Vol. IV, p. 371; *Concil. Wormat.*, a. 868, c. 38.

course, could, as little as the king, interfere with actual ownership or abolish slavery; but he tried to exercise a religious as well as a practical pressure upon the slave-holder. On the one side, mild treatment of the slave was always spoken of as one of the important evidences of a Christian spirit; on the other side, the churches and monasteries were recognized places of refuge for the fugitive or abused slave, the priest or abbot before giving the slave over exacting an oath or promise from the slave-owner not to do the refugee further harm.[1] In course of time this right of asylum was extended to the houses of bishops and other clerics, in England to the king's court and the courts of temporal lords—nay, among the Lombards the house of an ordinary freeman could give protection to the fugitive slave.[2] It was likewise due to the influence of the church that the king's *mund* acquired the all-encompassing

[1] Gregory of Tours, v. 3. *Lex Sal.*, c. iv. 15; cf. *Concil. Aurel.*, a. 511, c. 3; *Concil. Epaon.*, a. 517, c. 39. The churchman can help the slave by paying the price to the lord or helping him to further flight at the same cost: *Leg. Alamann.*, 3, 2; *Leg. Lang.*, Roth, c. 372.

[2] Wilda, p. 543.

protective power which it very soon came to have, inasmuch as to the church the king's position alone seemed stable enough to offer successful resistance to the violence and contempt for human life which certainly characterized Germanic society.[1] Besides, the church liberally rewarded any such service done her representatives, and in this way established a higher standard of treatment.[2] The church also favored liberation of the slaves to a degree which far exceeded that of any private or public slave-owner.[3] On the other hand, it is true that the church did not abolish slavery within her own precincts; she seemed far more eager to have slaves given her than to give them away herself, and she must thus be declared guilty of half-measures.[4] Yet in this respect, as in many others, the church had to conform to

[1] Wilda, p. 539. [2] Gregory of Tours, iii. 15.

[3] Numerous instances in the Formulae and other sources (*Life of St. Eligius*, c. 10).

[4] Löning, *Gesch. d. deutschen Kirchenrechts*, Vol. II, pp. 227–29; *Lex Bajuw.* (ed. Walter), tit. i. c. 5: "Si quis servum Ecclesiae sine mortale culpa occiderit . . . . duos similis restituat."

the economic condition of the time, and in her struggle for material independence, which alone could secure success to her in her ideal pursuits (since might alone can protect right), she needed cheap labor, and took this from whatever source it was offered. In holding slaves as cultivators of her enormous estates the church made servitude as comfortable an existence as it could ever become. The slave of the church was more esteemed by the law than anyone's except the king's, and the churchmen were the first who, in judging a case, made a distinction between intentional and unintentional acts, thus by degrees opening the way to a more intelligent jurisprudence, even for the slave.[1]

The most difficult point still remains to be dealt with, namely, when and how amelioration took place in the plain everyday relation between the ordinary slave and his master. Where there were no extraordinary forces at work, the change naturally was almost imperceptible, accomplishing only gradual and apparently very insignificant

[1] Wilda, p. 547.

results. But this is the usual way of life and safe to judge by; while, being more difficult to follow, it is more important to try to explain. In regard to the relation between master and slave it has already been pointed out that the letter of the law and the actual condition might not correspond. Grimm, in his *Rechtsalterthümer* (4th ed.), eulogizes the patriarchal life into which the slave as a mute and always obedient servant fitted so well. In his picture the slave figures as the natural completion of a perfectly harmonious household. It is very likely indeed that once upon a time such harmonious conditions existed.[1] Occasionally, however, these conditions continued to exist, wherein the slave, instead of being abused, was cared for and protected as a legitimate member of the family; and it is probable that under these circumstances he wished

[1] But in the East proper, where life is easier and human beings can be maintained at little cost, rather than in the West, where all things come harder, because the struggle for maintenance of life is more severe; a circumstance which must count a good deal toward influencing the temper of the ruling class.

for nothing better. But in cases where this harmony was broken or did not exist, the whole weight of the situation descended upon the slave and made him a victim of exploitation and tyranny. Such a condition cannot last, but must sooner or later see a change. It must have been the captive, the freeman reduced to slavery, without any deferential relation to the lord, who was the first one to feel the degradation and strive with all his might to get out of it, thus setting an example to those born in the condition. The slave in this form revealed himself as a man reduced to a thing, yet without any willingness to acquiesce in the situation, his will as a matter of course always at variance with his master's. Thus it might be said that contemporaneously with the establishment of slavery begins the desire for the destruction of it; the individual suffering makes possible to others the realization of suffering in general. Of course, the master succeeded in breaking the will of the slave, and if no fortunate circumstances intervened, the former freeman was reduced

to such non-identity as the law prescribed. But therewith the incident was not closed; the same thing happened over again, the same revolt, the same breaking into bondage; and however useless and painful to the individual, with the slave in general it served to keep the wound open, and keep alive the consciousness of his situation. History has very few notices of any concerted movement on the part of the slaves to secure their release. They ran away, they infested the woods and the roads as highwaymen,[1] for in some way they had to secure a living; spontaneous outbursts, these, of the longing for freedom which only succeeded in making antagonism on the part of the free keener than ever. Bands of slaves or even small armies of them sometimes declared war upon society and even gave battle to the military force. Sometimes they succeeded, thus throwing parts of the country into utter confusion and necessitating martial law. But sooner or

[1] *Ynglinga Saga*, c. 30 (the story of Tunni): "Thereafter there flocked much folk of the runagates and they lay abroad in the wild-wood," etc.

later the fierce glow of rebellion wasted itself, the marauders were pursued and beaten, a terrible example was set those who were still uncertain, and slavery existed as before. Thus there can be no doubt about the slave's will to be free, even if he was accustomed to thraldom, a wish most unwelcome to his owner and peremptorily punished as an intention leading to destruction of property no less than to neglect of inviolable duty. This was perfectly natural. If, as Mommsen suggests, the slave was originally so absolutely without rights that he had the master to thank even for his life,[1] his relation was not only one of absolute subservience but of sacred obligation. There was a religious significance in his being under the lord's command which made disobedience and revolt doubly odious. He broke bonds which sprang from gratitude, gratitude for the greatest gift of all, the gift of life, not from the sense of impotence only. As a natural

[1] As to what death a prisoner taken in battle might suffer, see *Njálssaga*, c. 156 (the death of Brodir in Ireland); *Saga Haralds hin Hárf.*, c. 31.

result, however, often the slave broke away; if he did not perish in the attempt or as a result of it, he was always brought back to his former, perhaps to a worse, state. He was indeed made to understand that the lord had rights none could do away with. Thus under the influence of fear of consequences, the slave's will may well have melted down to a mere wish, which almost evaporated altogether when he contemplated the futility of any attempt of his. The resulting apathy or desperation may have effected a subtle change in the disposition of even the meekest slave, a change before which even the almighty lord might quail.

The old fiction, then, that the slave had no will aside from his master's, that apart from him he was nobody, exploded, as a fiction should, and although it was kept up legally at least,[1] people ceased to believe in it, as they ceased to believe in the ordeal. Even among the Romans society knew that the slave, whatever his juridical position, was in reality a person with both will and power

[1] See the curious nature of many titles in the laws.

of decision capable of doing injury far beyond his limited sphere of action. In trusting their children to slave educators, for instance, the Romans must have been aware of the danger of having characters formed not at all in keeping with their own conception of proper living. The strength of the master lay in his power to crush this will of the slave; deny it or ignore it he could not. When the slave broke the bond of obedience, the cowardice for which he was despised, but to which he was purposely brought up, made him afraid of doing anything openly. Thus stealth, murder, night attacks, were his chief acts of self-assertion. In such cases, when the slave acted on his own initiative without the knowledge or permission of the lord, showing himself unmindful of command and punishment, the question of responsibility for his doings soon became acute. Previously—if it be permitted to reconstruct the past wholly from suggestions found in the laws (they being to such large extent piecework anyway), seldom if ever from any direct statement—the

lord was responsible for everything. The slave committed a misdeed very much as an animal would, a stupid blunder as it were; and the lord was held to account, as if he had himself committed it. For who could argue concerning right or wrong with the mischievous or foolish brute, devoid of real intellect as of sense of duty? The oldest of the Germanic laws, *Lex Salica*, again and again mentions the lord as having to pay the damage or the value, as well as for the temporary uselessness,[1] of the injured or destroyed object. This shows the enormous importance of property, even in a primitive society. The lord then took upon himself to discipline the ill-behaved slave. But if the question of outlay could better be met in a different way, money and kine perhaps being dearer than slaves, the owner yielded the slave up to the injured party as thing for thing, as slave for slave; a common way of paying material damage. The new owner

[1] Much in the same way as interest is paid on money borrowed, for the time useless to the owner unless such compensation is made—if that is the right explanation of *dilatura*.

then, if he liked, punished the slave. For if a dog or other beast could be made to understand it had done wrong and vexed its master, the slave could, too; though he was often done away with altogether, if the lord could better afford this than having a constant nuisance around. But when the slave committed a deed for which it would in every way be disadvantageous to the lord to plead responsible, there was an odd change in the behavior of the free. Although the lord was still, in the eyes of the law, the very source of existence and the mainspring of his acts, yet the slave rose in general opinion to a higher level. Or, to state it more from the standpoint of practice than of philosophy, the slave sank from the sometimes offensive, but generally useful, brute to the evil-intentioned, dangerous reptile whose movements were always to be watched and whose fangs were to be feared. Under such circumstances it was natural that the lord could not afford to be looked upon as the constant source and origin of every deed of the slave. The law, as before, demanded

that the lord pay for the slave,[1] he having nothing of his own; and the extent of this responsibility showed itself in the lord's having to pay the full wergeld as well as all other expenses caused by any action of the slave's. But henceforth there was a distinction made between the economic and the moral liability. The two views, the older and the newer, appear side by side in many laws, as if no definite distinction were made and both had currency; as very likely they had, since past and present are strangely blended, no revision of the previous laws being thorough nor any new departure absolute. The lord might indeed be at the bottom of the evil act, to ascertain which involved perhaps a tortuous procedure in the courts; but it became a question of social self-preservation with him to deny any share in the deed, since he might not wish to face the indignation and the revenge, and might find it convenient to refuse rather than to bear the guilt imputed to him. Thus the fallacy of generations in

[1] *Lex Fris.* (ed. Walter), i. 13, 14; *Lex Sal.*, xi. 2, 5.

regard to the moral non-identity of the slave collapsed and a more reasonable basis for his existence was established. Henceforth the slave was looked upon as capable of doing whatever he had a mind to and from a personal motive,[1] the nature of which it was the freeman's first business to ascertain.

There was something peculiarly galling to the pride of the free in an offense committed by a being so degraded, so dependent; but when it concerned life more precious than his own—the threatening and murder of freemen or the slaying of his own master—it became unendurable. Such a matter was felt to be of lasting importance. As the *Njálssaga* casually remarks: "Thralls are men of more mettle than of yore; they used to fly at each other and fight and no one thought much of that; but now they will do naught but kill."[2] The immediate impulse on the part of the free was at such times

[1] It seems as if this lesson must have been learned everywhere and rather early; but nowhere with such force or effect as by the Germanic nations who came in contact with the cultivated Roman slave.

[2] C. 37 (Dasent's tr.).

to cut down[1] the despicable being, and very few escaped the swift doom. But if the slave did get away, punishment by the lord appeared as no fit return; the sense of outrage and thirst for revenge were too strong to be satisfied with the customary compensation and called for a more definite placing of guilt and adequate atonement. Of course the slave had nothing more to lose than his life; but this was to be taken from him by those[2] who had a better reason for doing so and a greater grievance against him than his owner, who avowedly had no connection with the crime.[3] Before he was put to death, how-

[1] In the Icelandic sagas the murders planned by freemen with slaves as the would-be assassins invariably end with the slaughter of the latter before they have had time to do much harm. In such case they fall victims to their master's wiles, who promises them freedom and good gifts for their obedience (*Eyrbyggja Saga*, cc. 26, 43; *Egils Saga*, c. 81).

[2] *Wihtraed*, c. 23; *Hlotaere & Eadric*, cc. 1, 3; *Ine's Laws*, cc. 74 and 1. See also *Leg. Lang., Luitpr.*, c. 21; and *Roth.*, c. 142: "Et si mortuus fuerit," etc.

[3] On the basis of the slave being nobody, doing nothing, the lord at first paid the wergeld in full and kept the slave; but the semi-recognition of the culpability of the slave is already expressed in the famous passage of *Lex Sal.*, tit. 35, 5, where the slave is traded to the injured party in payment of

ever, the slave had to make a full confession of his guilt, and since nothing but stringent measures could compel him to tell the truth he was promptly put to torture. This was the first fearful tribute that the slave paid on the road to the establishment of his own identity; a tribute every downtrodden layer has had to pay before it reached the more even balance of power.

In the case of killing his master, the question arose: Had he been hired to do so by another, or had he done it out of his own

half the wergeld. This is perhaps the most direct evidence we possess of the beginning of a change. But even so, the lord could protest and throw the whole blame on the slave (*Var.*). In *Leg. Lang., Roth.*, c. 142, the lord pays half or all of the wergeld according to whether the man died or survived, and besides yields the slave, the latter to be counted for half, or only a portion—it is not clear which. Gþl., c. 163, goes even a step farther in demanding that the master either give up the thrall or pay the wergeld. *Lex Rib.*, cc. 17, 18, 22, 29, holds the same attitude, except that here it is not the value of the freeman but a certain fractional sum which suffices, the so-called *sclavenwergeld*, which introduces on behalf of the slave something like what had been long ago settled in regard to the *litus;* a legally accepted money-status independent of personal valuation. Amira, Vol. I, p. 393: "Wegen todtschlag eines freien. . . . . Sonst gilt die regel das lösegeld dürfe dem gesetzlich. werth d. unfreien nicht übersteigen."

spite? To settle this the slave had again to be questioned by the most efficient means. Were there no reason for supposing the deed instigated by another, no death could be too swift nor any questioning too painful to settle the reasons for this most heinous of all crimes. In any case it was the heirs of the deceased who conducted the trial. So far the whole proceeding was private, public justice being resorted to only when the lord had refused to do his duty; namely, to aid in producing the slave for inquisition or punishment.

The question may briefly interest us here whether whipping as a means of producing evidence was a native institution or, as some writers have it, adopted from contact with the Romans. As far as we know, the Germanic nations never employed torture for the sake of torture, at least upon the slave. The natural impulse of the enraged freeman was far more to kill the loathsome mischief at once, destroy him as one destroys vermin. But the rules of blood-feud and the need of finding a true cause against someone, so that

life should not be spilled for nothing, demanded that the thrall, when he had done something, be forced to speak. The Icelandic sagas repeatedly mention freemen who, having caught the miscreant slave, had "a true tale out of him."[1] What this consisted of is nowhere exactly said; but the laws speak of the right to torture (*pina*) the slave for the purpose of getting the "true tale" out of him.[2] The race which knew so many and terrible ways of punishing equals and slaking the thirst for revenge in a lingering death for the victim must have known how to make an obstinate slave come around. It is unnecessary to imagine what might be tried. Very likely the slave himself saved a great deal of trouble, since cowardice was looked upon as his chief characteristic; but at any rate the use of the whip was nothing new. The Germans may or may not have profited from the Romans in learning how to make flogging tell on a

[1] *Eyrbyggja Saga*, cc. 26, 43.

[2] Gþl., c. 262: "Pina hann hvarke við ellda ne við jarn ne við vatn."

slave; their knowing how to flay a man alive by pulling off the skin with the hair (*decalvatio*)[1] or thrash him till the skin peeled off does not seem to necessitate their learning. Torture comes easy to hardened, pugnacious natures who themselves scorn pain or the weakness of showing suffering.

Torture, however, could not be resorted to indiscriminately. There were instances where the slave was only vaguely suspected, as it were, on no evidence but suspicion itself. The lord disbelieved the charge; he went so far as to deny it, and yet he allowed the painful quest to take place, largely because he had no desire to run the risk of exposing himself or shielding one unworthy. The torture might end in the slave becoming disabled, or even in his death, which meant pecuniary loss to the lord. This must have happened a number of times before life thus wasted caused any decision among the masters to save property, inasmuch as it

[1] *Cnut's Laws*, ii. c. 30, 5 (ed. Schmid); Gþl., c. 259: ". . . . berja hud af honom görvalla [altogether]; . . . . hydjan hann fyrir fimt"; cf. 22.

would not be the poorest of slaves who came under suspicion, but the ablest. The lords finally made the rule, and the law embodied it, that when such a case came up, the injured party in return for the privilege of making the quest should deposit at least the equivalent of the slave, before torture, as a security to the owner—this not as any boon to the slave, but as a consideration to the lord. For although the slave's act was the immediate object of the investigation, it was the interest of the lord which was ultimately at stake. As Jastrow expresses it: "If the plaintiff has only first given pledge to the lord for the value, there is no restriction to his power; he may torture the slave as much as he thinks fit!"[1] Torture, however, proved so effective in bringing about discovery of the guilty and just punishment for the evildoer that it was employed for matters less grave, for theft, e.g.; although it is difficult to say which was held more precious, life or property! *Lex Salica*, the oldest and most authentic of our laws, is the one in which the stages in

[1] Quoted from memory.

the development of liability on the part of the slave may be studied most successively; not that *Lex Salica* is the more "progressive" among the laws, but because the leap from the rigid past to the more lenient present seems less tremendous than in many other laws. In *Lex Salica* the intermediate stage seems as yet to prevail; there is a certain wavering perceptible in the sections with their variants which is favorable to preserving most of the peculiar traits of the past and yet suggestive of the future. In tit. 40 the trial of the slave on these grounds is treated with a fulness and comprehensiveness found nowhere else in the old laws. But even here stages are perceptible, making the title rather heterogeneous and showing the need of supplementary sections from other titles,[1] just as the

[1] See the great difference in tenor between the stern tit. 12, where the slave suffers 120 blows for theft of 2 sol., or castration for theft of 6, and tit. 4. 1 and 3, where 120 blows are given for theft of 15 and 35 sol. respectively. It makes little difference that in tit. 12 it is punishment, while in tit. 40 it is torture; in fact, one would expect in the last case the blows to be augmented. But if tit. 40 is modeled on *Leg. Visig.*, vi. 1 and 4., tit. 40 must be of later origin than tit. 12, while in itself, except in regard to detail, it seems no particular improvement on its "lordly" prototype.

law itself is heterogeneous and needs explanation and commentary from other sources. While § 1 states the naked rule that the slave accused of considerable theft should be put to torture in order to make a clean breast of it, § 2 starts a new principle and only §§ 4 and 5 take up the thread begun in § 1. The matter was evidently altogether a private affair, an expression of the private jurisdiction of the lord to whom the injured party appealed for retribution and to whose jurisdiction he succeeded[1] as soon as the master agreed to let him, instead of trying the slave himself. The slave was then put to the post or stretched on the bench and the quest proceeded, the plaintiff being provost, the lord for greater security supervising. Very likely the lord also had previously employed a similar method of obtaining truth; under him, however, the torture was partly a castigation, much as animals are

[1] It is significant that the plaintiff himself did the torturing, i.e., himself delivered the blows. Evidently *he* alone could be trusted to make the blows tell, the lord having been more inclined to perfunctory treatment, to let the slave slip through without too great a hurt, so as not to make him unfit for work for weeks afterward.

beaten out of anger and desire for revenge. But in this latter case the vengeance was of a more poignant nature, the first fumbling attempt at justice, blindly administered. If the quest succeeded the slave was either killed[1] or reduced as utterly as cunning could make him. He was henceforth merely the beast of burden, the obedient tool, nothing more. In § 6 the willingness of the lord to let his slave undergo torture (provided he was himself secured) becomes obligatory, and the laws look upon the unwilling lord as the true perpetrator of the crime, the secret thief or murderer.[2] In §§ 7–10 the matter has progressed even farther. The proceedings have been or may easily be transferred to the public court.

[1] It is impossible to see who, the state or the private individual, should have been particularly concerned about what punishment was given the criminal slave (notwithstanding *Lex Sal.*, 40, 4, to the contrary) unless it were the church.

[2] But that it was the slave and not the lord against whom justice was henceforth directed is evident from the demand that the injured party, when the slave had confessed, should pay the price of the slave to the lord, who was thereby in a measure reimbursed for the loss in laboring power. For that money, the law implies, he could buy another, everybody thus having received his proper due.

mainly because the lord has been negligent or unwilling to give up the slave, the lord thereby having loaded himself with the guilt which would under other circumstances have been the slave's, and being obliged to make amends accordingly. The slave then had to be presented in court before the assembly of freemen, thus passing from obscurity into the full daylight of public procedure—hardly to his own satisfaction, since the publicity of his punishment, his naked misery, must have made his smart even keener.

Paying heavy fines and damages and yielding the slave in addition must have met with objection on the part of the lord, and under certain circumstances must even have told on his economic condition. The uncertainty of the whole proceeding—for the plaintiff, of securing evidence of the guilt; for the lord, of being properly reimbursed for his loss provided the slave was innocent—was such that a less stringent method, except in flagrant cases, came to be preferred. The lord, therefore, according to tit. 40. 2 (*Var.*)

and 12. 1 (*Var.*), was permitted to release the hide of his slave from torture and punishment by paying a nominal fine adjusted to a nominal value of the slave[1] and himself execute the punishment—all presumably to be done only in case the plaintiff had no objection. A new phase was reached, how-

[1] This was 3 sol. against 12 sol.—what the German authors call *Sclavenbusse*, the meaning of which, by the way, is not quite clear (unless it be that the fine for the slave is henceforth adjusted to the socially small value of the slave in the same way in which payments for the free are adjusted to his high value). The fine is certainly small as compared with the payment for releasing the hide demanded from the lord in other laws.—*Lex Rib.*, cc. 18, 19 (36 sol.); *Leg. Lang., Roth.*, c. 254 (40 sol.); *Wihtraed's Laws*, c. 27 (70 shill.). But *Lex Salica* is so much older that the comparison hardly counts. Notwithstanding the difference in age, the title generally comes nearest in tenor and meaning to Fþl., x. c. 40, where are demanded 6 aurar, or rather 2.1 sol., since it is counted in aurar, for the hide of the thrall. The 3 sol. nevertheless are something of a puzzle. Do they signify (1) that the slaves were too plentiful to have much of a price paid for them; or (2) was the price of the slave perchance so low because he had lost in value, as animals do which are known to be troublesome and vicious; or (3) did the plaintiff agree to the small amount because his suspicion was not well founded and he was glad to get something for his pains (on the order of tit. 53, where the offense being "worth" 15 sol., the plaintiff is "bribed off" with 3)? Plainly the price as well as the punishment are indicative of warlike times and of the extreme social inferiority of the slave.

ever, when the master refused to reclaim his slave from justice and made him bear the results of his misdemeanor altogether himself. In other words, paying for keeping the "thing" could not counteract the complications caused by the "person," and the master was inclined to let the latter bear the effects of his own acts.[1] This must to

[1] But this feature is not met with in *Lex Sal.* only in later legislation, the capitularies and other laws. Gþl., c. 259, decrees that where the lord will not free the slave with oath, the slave's head shall be struck off. It is remarkable to find in Norse law, where the old and the new at first sight meet abruptly, so clear an indication of the intermediate stage as in Fþl., x. c. 40 (almost a *Lex Sal.*, tit. 40, over again): "Everyone shall be responsible for his slave born in this country, both with word and with oath in what happens to him either in word or in deed. But if he [the slave] runs away from his lord, then the lord, if he can reach him, within five days shall have him flogged. But if he [the lord] will not flog him, then the king's bailiff shall take him and within five days have him flogged and make use of him for himself. But the husbandman has the choice of releasing the slave's hide with six counted aurar and have his slave himself. But if he [the slave] be of foreign birth, and suit is brought because of him, then his lord shall sell that slave to the one who has suit and *he* shall torture him till he tells the truth in such a way that he is worse neither in work nor in worth; and later the husbandman shall take that slave, if he is innocent, and use him. But if the strange slave runs away from his lord and he is afterward taken, within five days he shall be castrated or the husbandman shall have his slave." See also Gþl., c. 262.

some extent have been connected with a decrease in the demand for unfree laborers and an increase in the number of needy free, so that the master was not so dependent upon his stock of slaves. But, although some outside cause must have helped to free the master from the economic necessity of buying back the slave just because he was a laborer born to the toil, I am at a loss to point out the exact evidence of this change. The fact of the slave's being given up to corporal and capital punishment made crime more difficult for him and developed the sense of moral responsibility which made it more natural to him to answer for his own deeds.

Hitherto the slave had never come to court except on extraordinary occasions to be punished, or to appear as defendant, except for the benefit of the lord.[1] But henceforth

[1] *Lex Sal.*, tit. 39, Add. 1 and 2, where the slave testifies at the *malloberg* (with witnesses) in favor of the lord against the freeman who had abducted him. Cf. *Digest*, xxii. 5, 7, where testimony of slaves was admitted when all other proofs were lacking; also in case of rape and *lèse-majesté* (*Edict. Theod.*, cc. 19, 49). King's slaves and slaves of the Abbey of St. Germain could swear in court as well as the free, but more trust was put in the confession pressed from them by torture (Guérard, Vol. I, p. 311).

the lord might send his slave to court if he chose, although he had to appear with him as the guarantor that the demands of the law were fulfilled. The slave was even admitted to ordeal as any freeman.[1] But the punishments he underwent were very much the same; at least the laws suggest no difference: (1) whipping (3 sol.), (2) castration (6 sol.), (3) capital punishment. In other words, the property relation which had been predominant before underwent a distinct change: it was not so much the ownership, the economic relation, as the social which came to the fore. As Jastrow has expressed it: the slave was henceforth rather in his lord's protection, in his *mund*.[2] The slave was still an unfree, but he was not a thing nor an animal, he was a person, although an

[1] See the first instance of ordeal as open to a slave in *Lex Sal.*, c. iv. 5 and 6; v. 12; *Lex Rib.*, 30, 1 and 2. An innovation of the church? The first time the church expresses the responsibility of the slave is during the early part of the sixth century, soon after the conquest of Gaul by the Franks; cf. the famous *Concil. Agathen.* (a. 506), c. 62 (on Visigothic territory), confirmed by *Concil. Epaon.* (a. 517), c. 34; for a case of slaves admitted to trial by combat as champions for others, slave against slave, see *Lex Bajuw.*, 17, 1 and 2.

[2] I cannot guarantee the exact wording.

extremely reduced one. This change very likely hangs together with the general amelioration of family relations which can be observed in the gradual reduction of the *mund* from a relation of absolute power to one of conditional guardianship under the supervision of the kin,[1] the slave moving along as it were in the wake of the free. The lord held court where the slave appeared as defendant,[2] different from the summary justice of before, and the greatest change of all is that the slave paid for the stolen object,[3] and for the release of his hide[4] either to the

[1] Heusler, *Institutionen*, Vol. I, p. 21.

[2] In England, where the relation of the *hlâford* to free and unfree alike (the word is first mentioned in *Ine's Laws*, a. 688–90, ed. Liebermann) evidently had existed for a long while (*Aethelberht*, c. 90, a. 601–4), the slave must at an early date have had the privilege of answering for himself. As Guérard remarks (Vol. I, p. 278): "Les trois conditions serviles—l'esclavage, la servitude, et le servage—existèrent simultanement." There are other traits (or rather absence of such, for example, castration) which indicate that the English laws were either conspicuously silent in regard to the slave or far less severe in their treatment of him.

[3] *Aethelberht*, c. 90.

[4] *Withraed*, c. 10, 15; *Ine's Laws*, c. 3, 1. See the apocryphal: "aut tres [sex] solidos reddat—pro dorso suo" (*Lex Sal.*, 12, 1 and 2), which after all may express the change that really took place.

law, which would be to the injured party, or to the lord who was supposed to have paid the price beforehand. Thus was established a responsible relation to society on the part of the slave. Of course, what the slave had to pay with was in the first place accorded him by the lord,[1] but it must have been something which the slave had an opportunity to make more valuable by his own industry; and here we come back to the question of the slave's property in the shape of his *peculium* or *orka*.

That slaves should have been settled on land of which they paid a certain amount of produce as due[2] and kept the remainder for themselves, seems to be the most natural solution of their maintenance and the alimentation of their children. The laws and historical records make little mention of this. To have the slave do work for himself

[1] Guérard, Vol. I, p. 294: "Dans la règle le maître retenait le pécule du serf qu'il vendait (*Leg. Visig.*, v. 4, 15; *Lex Bajuw.*, xv. 6), et cette coutume était conforme au droit Romain."—*Digest*, xviii. 1, 29; xxi. 2, 3.

[2] *Lex Bajuw.* (ed. Walter), i. 14; *Leg. Alamann.*, 21 (A) may serve as instances, although hardly typical of anything but the customs of the church.

and keep the income from it seems an equally simple solution of how to provide for everybody within the estate. If the law formerly indulged in the fiction that the slave had no identity, the law now indulged in the diametrically opposite one that the slave was less of a burden, if he were allowed to look after something which gave him the shadow of self-possession. Originally and legally the slave could call nothing his own; having no legal personality, he could hold no property; everything, as it was given to him, could also be taken away from him; but practically it became the custom (very early, as it seems[1]) to recognize a certain amount of property as his own. This would spur him to industry and make him more content with his lot. Of course what he earned was ultimately the lord's, as he himself was the lord's, and at his death it all came back to the lord,

[1] But at widely different times within each nation; cf. *Lex Sal.*, tit. 12, 26, 2; *Var.* (a. 490–510); *Lex Rib.*, 17, 18, 19 (a. 560?), where the fact of slaves having possessions appears as a possibility, and Anglo-Saxon laws, *Aethelberht*, c. 90 (601–4), where this seems already a matter of long standing. Further, the somewhat ambiguous *Leg. Lang., Roth.*, c. 234 (a. 643), and last but not least the Scandinavian laws, which if late in date are old in content.

who bestowed it anew on the slave's children or on some other slave; but in the meantime it helped the slave within certain limits to manage for himself. That with the consent of the lord he could buy and sell, receive gifts, and make payments seemed only the result of his having a little property. The question is, of course, how much of what he earned was his own—a question which I must put off to a more convenient time. The laws occasionally speak of *peculium*, though meaning not land but inventory,[1] which exceedingly complicates the question. There is a possibility, which amounts almost to a probability, that the *peculiare* sometimes spoken of[2] (but always in the same set terms)[3] in the Formulae for the liberation of the slave may have reference to something different from cattle or property in general. The expressions *laborare*, *conlaborare*, *collaboratum*, suggest far more the work on the

[1] *Roth.*, c. 234; doubtful, *Lex Cham.*, 14.

[2] Form. *Andec.*, 45, 59; *Form. Marc.*, ii. 29, 33, etc.

[3] ". . . . peculiare quod . . . . laborare potuerit"; *Form. Andec.*, 59: ". . . . peculiare concesso quodcunque laborare potuerint"; *Form. Marc.*, ii. 29: "peculiare quod habet"; *Form. Bitur.*, 8, etc.

soil, the cultivation of land. Thus the phrase: "Peculiare quidem suum sive collaboratum cum omnibus facultatibus suis" (*Form. Cod. Laudum.*, 14) points to land (perhaps a clearing) which is to be given the liberated for his maintenance. The fixedness of terms, however, is very remarkable[1] and the words may mean something or nothing, according to whether it is possible to prove that *laborare*, *conlaborare*, are used only for labor in connection with land. This it is possible to do at least in regard to *conlaborare*.[2] *Laborare* signifies work in general,[3] often connected with the possession

[1] *Form. Sal. Lindenbr.*, 9: ". . . . peculiare vero suo seu conlaborato quod habet vel deinceps elaborato potuerit, sibi habeat, concessum adque indultum," etc. In this case it is *a slave who liberates his slave.* But, notwithstanding, the same terms occur, e.g., *mundeburdium*, *defensio*, *obsequium*, which figure in the chart given by a freeman, although it is more than suspicious that the liberated should owe *obsequium* to his inferior.

[2] *Form. Sal. Bign.*, 22: ". . . . decima de omnia fructa quicquid super ipsam terram conlaborare potueris." In connection with *peculiare*, see *Form. Sal. Merk.*, 14; *Sal. Lindenbr.*, 20.

[3] *Form. Marc.*, i. 35: ". . . . antecessores abbatis ibidem laboraverunt"; *ibid.*, ii. 7: ". . . . et quod pariter in conjugium positi laboravimus"; *ibid.*, 17: ". . . . vel in tuo serviter pariter laboravimus."

of and care for property, in this case most likely land; *conlaborare*, however, emphasizes the meaning of work, hard work, as suggested by the prefix, much as in the German *be-arbeiten*. In case *peculiare* should have followed the common meaning given *peculium* and indicate cattle,[1] the heads or herd allowed the slave would have given him little help in maintaining his freedom, even if the latter were given him in perpetuity, unless the bit of land on which to graze were secured. In a number of cases the liberated slave, as already indicated (note 1), was freed from the *obsequium*,[2] i.e., the further dependence upon the liberator; and although this privilege may not have counted for a great deal, since the liberated sooner or later was obliged to ask for someone's protection, yet the ownership of land on which social and political rights rested must have been accorded him before the chart

[1] As in *Form. Bitur.*, 15, where a freeman transfers ownership in all his property to his wife. The real difficulty in the explanation of *peculiare*, exactly as in the case of *peculium*, lies in its frequent use for free and unfree property alike. Cf. *Form. Sal. Merk.*, 33.

[2] *Form. Marc.*, ii, 32; *Cart. Senon.*, 6, 43, etc.

could even suggest possibilities of that kind. For establishing beyond doubt the existence of a true slave's *peculium* the Norse Royal Sagas may perhaps help us. The saga (*Olafs hins Helga* [*Heimskringla*], c. 22) speaks of a rich and powerful lord and says:

Erling had over thirty thralls at home, besides other servingfolk; to his thralls he allotted each day's work, which being done he gave them leave and leisure, each one who wished, to work for himself in the dusk or at night; he gave them acre-land wherein to sow corn for themselves, and to get them money by the increase thereof; he set a price and ransom on each of them, and many redeemed themselves the first or second year, but all in whom was any thrift redeemed themselves in three years. With that money Erling bought himself other thralls!

And the same saga tells later about the same lord and his slaves (in regard to the incident with Asbjörn Selsbani, c. 123):

Said Erling: "It seemeth to me most like that my thralls own so much corn as that thou wilt have a full cheaping; and they be not within laws or land-right with other men." Then the thralls were told about the bargain, and they gave forth corn and malt and sold it to Asbjörn, who loaded his ship even as he would. (Morris' tr.)

The land was given to thralls, not merely as their *peculium*, but as their property equivalent to their freedom; *Laxdaela Saga* (c. 6) gives an instance of where it is told how Unnr, settling a portion of Iceland with her retainers, gave to her freedman one valley, to her slave another.[1]

In the possession of such *peculium* or income from his work lies, in my opinion, the secret of the ultimate amelioration of the state of the slave. It was the fundamental principle of his gradually improving condition. As it was economic causes which chiefly led to the establishment of slavery, so it must have been economic causes which helped to bring about the abolition.[2] The

[1] "Hundi het lausingr hennar; . . . . honum gaf hon Hundadal. Vifill het þraell . . . . hon gaf honum Vifilsdal."

[2] The possession of a *peculium* had much the same significance then as military service with the accompanying benefice in the lord's or senior's retinue had at a later period. Service and benefice became the lever which, unsuspected by the ruling class, raised the *ministerialis*, or *miles*, from the position of mere *knecht* to that of vassal and privileged follower who ended, perhaps, as bailiff or lieutenant to the king. The benefit of the *peculium* was, of course, far more humble in nature, as were agricultural pursuits, compared with the danger and bravado of a warlike profession.

possession of property made the slave, under circumstances, able to pay fines, and the lord, although the source of the *peculium*, was not so much engaged in a pecuniary way, needing to come to the rescue only in extraordinary cases. The slave accordingly was less despised because he was less needy of constant support. It must be supposed, too, that the slave, on his side, since he had to pay himself, and was less driven by desperation, tried to commit fewer crimes so as not to have his little reduced to even less. His little having made him—only conditionally, of course—morally less dependent upon the lord, he separated himself from the lord, as it were, existed no more solely for his benefit, was far more one of his tenants, retainers, represented, indeed, by the lord, subject to his judgment, but not arbitrarily treated as an article of absolute property. It is the milder, less exposed form of slavery, that which is hardly to be distinguished from serfdom.

There is another species of slave to which reference has once been made (p. 92, n. 1)

and which it is only proper should be spoken of in connection with the slave's *peculium*. This is what Guérard, Vol. I, § 153, calls the slave of the slave, the *servus vicarius*, the helping, the "hired" slave, as distinguished from the *servus ordinarius*, the slave in charge, as it were. There is, of course, nothing very astounding in the slave as husbandman, under certain circumstances, being in need of someone to help and that the help was accorded him from among the surplus slaves of the manor, for which he paid, perhaps, an additional gratification. The position of the *vicarius* was evidently a shade less favorable than his temporary employer or, on certain conditions, even master,[1] as it was natural that when slavery dissolved itself into layers, an upper and a lower, the lowest should retain the traits of severer bondage, which as yet could not be done away with. The whole matter, however, is so evidently a continuation of Roman customs, rather than a Germanic institution, that, in spite of its great interest and its

[1] *Form. Marc.*, ii. 36.

peculiar parallel in the "freedman's freedman" of the Icelandic law (*Grágás*, c. 96), I must refrain from further discussion of it here.

The improvement of condition must also have brought additional suffering to the upper layer of slaves, particularly through the publicity of punishment and the competition and jealousy of the needy free. The demand upon the slave's power of resistance grew fiercer and accordingly many must have perished in the struggle.

It is very likely that under the influence of this changed relation, as well as through the efforts of the church, the marriage of the slave comes to be recognized and respected. Originally the slave could not be married. The master could separate husband and wife at any time and dispose of either as he pleased. With the idea of the slave possessing property, however, the thought must have come forward that he could possess a wife as well, and that not even the master could, with impunity, violate the matrimonial rights of his slave.[1]

[1] *Decretum Vermerense* (a. 758), leg. sec. ii. 1, p. 40; cf. with Cod. Theod., ii. 25, 1; *Grágás*, c. 111.

Thus not only the state, as represented by the king, or the church, as the advocate of brotherly love, but also the very incongruity of slavery itself in connection with economic and political changes which no one could quite foresee, helped the slave forward to a better existence. There are other more extraordinary and particularly humane signs of betterment for the slave which had nothing to do with either Roman or Christian influences, but sprang purely from Germanic life, and which give us a gentler picture of this than we have hitherto been able to have. I refer to cases where the kindness of possible relationship broke the awful rigor of authority and took the place of superiority. Such cases are found in Norse and Swedish law, where the slave who had grown up in a man's household became almost his foster-child and was called with a common name, *fostri*.[1] To him a higher value was ascribed; he came nearer the condition of a "freeman."[2] In the case of the *fostri* the master seems to have

[1] Amira, Vol. I, pp. 394, 712, 464.

[2] *Saga Olafs Trygvasonar*, c. 55; cf. Gregory of Tours, v. 18.



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been obliged to redeem him, even where he would have left the ordinary slave to his fate.[1] Of all slaves the *fostri* alone could legally receive considerable gifts from his master. The master could make him presents up to a certain value without the knowledge of his right heir. This is probably because the *fostri* was most likely the master's own child although of slave birth, brought up by him and entitled to some favor, but with no formal rights whatever.[2]

Last but not least we may ask what, outside rebellion, the slave did for himself by way of peaceful combination of effort. In the North nothing is heard of. Here no commerce, no industry, no opportunity except the ordinary small trade and hard labor opened a way to freedom, and even then only for the individual, not for the class. On the Continent, however, where the population was larger, communication easier, traditions

[1] Amira, Vol. I, p. 712. The wounding of a freeman by a slave is to be paid by fine if slave be a *fostri*, otherwise by body and life (p. 464). The price of an ordinary slave is 3 marks, sometimes 4, of an ox 4 marks, a stallion 6, a *fostri* 8.

[2] Gþl., c. 129; Fþl., ix. 17.

riper, and habits of peaceful occupation more enduring, the formation of "guilds," of which we have some slight evidence, seems to have been directed toward regulation of work and services.[1] Here certain arts and crafts were appreciated or highly in demand; the freeman had no time nor desire to learn them; the slave seemed to be the one from whom such patience and such attention should be expected. The tradition of professional "guilds" was still alive among the remnants of Roman population; moreover, the church, especially the monasteries, and the other great lords—whose estates were small principalities in themselves which supplied within their limits all needed for numerous dependents—could not but want their slaves to combine for the perfection of their training and rapidity of their work. In more favorable instances the desire for higher wages and better sales would compel closer association, although this rough concern of dependent workers could hardly be given the name of guild. The conscious existence

[1] Thierry, *Récits*, Vol. I, p. 260.

of the guild began only when serfdom too had run the greater part of its course, and free labor combined with half-free to the establishment of an industrial class. Such as they were, the combines of slaves met with favor as long as no danger from them appeared to threaten state or society. It is this sense of danger which seemed revealed in the capitulary of Charles the Great (44. Bor., c. 10), where it is ordained that slaves, as members of conspiracies, should be flogged, although nothing is said about the nature of the conspiracy. What reasons slaves should have had for conspiring, except the hope of bettering their condition, it is difficult to see. It is not unreasonable to suppose, however, that the conspiracy might have had some reference to the "guilds" which the Frankish government watched with as jealous an eye as in the past the Roman. As for what the guilds did for the slave besides rousing suspicion, we can only surmise that through them those who had no land earned in another way more rapidly and securely what helped in the end to buy freedom.

## CHAPTER IV

### LIBERATION

The personality of the slave being once recognized, even if only indistinctly, his value as thing became more obscured, and he was a man in bondage with few rights, indeed, but not without them entirely. The lord wielded absolute power over him only in theory; practically he protected him, and was his economic mainstay when the slave could not manage for himself. The condition of half-free thus dawned for the slave; not free and yet not quite a slave, a little of each, more of the latter than of the former—this is the next definite stage.[1] Still there

[1] This stage in modern conception would correspond to the serf. Still, even if Seebohm's *English Village Community* (p. 405) says: "Whenever a lord provided his slave with an outfit of oxen, and gave him a part in the ploughing, he rose out of slavery into serfdom," yet, the word "serf" there seems to be used only in its modern theoretical sense. It is safe to say that the real change was neither so sudden nor so complete as the passage would otherwise indicate. At our distance of time, no doubt, the gradual movement is imperceptible,

were ways to make him absolutely unrestrictedly free, and the original humanity in him restored to its full rights. But these were the rarer instances, because they were the more radical and perilous, while his gradual liberation through the successful work of generations was the far more common.

We have already mentioned the agencies that helped to bring about the amelioration of slavery. We shall meet them again in studying the liberation of the slave, acting,

and we see as sudden changes what were necessarily slow. At any rate, the name *servus* remained for the serf, and, although we know the condition of the serf (as a type) only from the period of its crystallization (twelfth and thirteenth centuries), it is, perhaps, owing to the identity of names that the development of what is technically called serfdom is usually ascribed to a much earlier period. But there is no evidence to show that the lord, or the law, for that matter, distinguished between the *servus* of the one kind or of the other. The dividing line was so floating, and of such individual (local) rather than general (national) importance, that the identity of names may as well speak for a prolongation of slavery. The *servus* of the one group had opportunities which the other had not, but these opportunities did not count for enough to warrant treating the new as so different from the old as to give it a new name. The *mansuarius* was distinct from the *famulus*, the *puer*, the *ministerialis*, but he was *servus* as well as they. The *servus* settled on land remained to all intents and purposes still a *servus*, i.e., a slave,

however, less generously now that the last step is to be taken, but, on the whole, tending to help him forward. The gradual leveling of the free and the rise of an almighty aristocracy that demanded a large retinue, such as the later Frankish empire and the early feudal period present, assisted the slave greatly. Philanthropic tendencies on one side and economic-political changes on the other also worked in his favor. It cannot be said that the end was reached before the

until he could be distinguished as belonging to a class, a change which it undeniably would take some generations to bring about fully. As little, therefore, as the Virginia slave, given a garden patch to cultivate and a cabin to live in, ceased to be a slave, because he was no longer an inmate of the manor, or as little as the villein of later ages ceased to be a vellein *de facto* and *de jure* because he ran off into the city and became absorbed among the many working hands there, just so little did the slave of the Merovingian or Carolingian time become a serf in our sense until a reasonable time had gone by, during which this new condition and all it involved had become established and recognized as a definite feature of social and economic life. I think, on the whole, it may be said that a great deal of unclearness exists in regard to what is to be the criterion of a serf; is he a slave liberated to the state of serf, or is he a slave settled on land merely and growing out of slavery by degrees into a state not definite at first, but becoming by imitation something similar to the *litus*, the *colonus*?

eleventh and twelfth centuries, and not quite even then. The development of a half-free class took the place of the previous development of an unfree; but this new class rose largely from elements which had no connection with the older slave class. On the contrary, it was created by the wholesale reduction of the bankrupt German freeman to economic servitude, such as had taken place many centuries before by the gradual reduction of the Roman free farmer to *colonus*. As in even republican Rome there was room largely only for capitalists and laborers bound to the soil, so in the later Frankish empire, there was rarely space for others than the feudal lords and their tenantry, of which the originally unfree portion had a tendency to work upward, while the free tended to sink below. In the meantime the original slave became absorbed among the free and disappeared.

There is no topic more difficult to treat systematically than the liberation of the slave. National peculiarities, a variety of conditions which show the governing thought

each time in a different light, and are often hard to bring under one rule, demand each some special attention. For the sake of a more rapid survey, and as an attempt to contribute toward the solution of the question, the main principles are here briefly pointed out.

There were various ways in which the slave could be given his freedom: (1) his liberation could be either complete or limited (conditional); (2) it could be of public or private character; (3) it could be gratuitous to the slave, or granted on the payment of his (nominal) value to the lord, either by himself or someone else; (4) and it could be given by nation, king, church, or private individual.

In regard to the first three points, the liberation which was public was often complete and sometimes gratuitous in character, though oftener dependent upon the payment of the stipulated fee; while the private and unceremonious liberation was likely to be conditional and limited because of the absence or only partial payment of the proper fee.

In regard to (4), the source of liberation, it appears most likely that church and king, because of their position, should be oftenest inclined to give freedom unconditionally and without fee; while the nation, owing to the nature of the act, should be least inclined to liberate and should do it only with great sacrifice and ceremony. Private individuals, however, would be likely to do so oftener and in order to secure benefits for the master rather than for the slave. There is evidence, however, to show that the church favored manumission of an unlimited nature largely only where she was not herself concerned; while by her frequent limited manumissions of her own slaves she most of all helped to create a class of half-free as a regular institution and economic necessity.[1] The king as the representative of the even greater landholder, the state, followed the example of the church and manumitted to half-free and *glebae adscriptus* on his own

[1] Löning, *Geschichte des deutschen Kirchenrechts*, Vol. II, p. 229. On the subject of protection on the part of the church for the manumitted, see p 232; on her policy in this, see pp. 233 ff.

estates. But as representative of the nation and holder of the highest Christian authority within the state, the king more than any other person helped to give the beneficent teachings of the church regarding the slave the active force which it demanded. The king at an early period became the manumitter on a large scale and awarded persons thus manumitted a substantial protection and support such as no one else could or would. Hence the king and the freedman manumitted through the participation or in the presence of the king came to have a vital interest in one another. The freedman's property passed by death to the king, and his wergeld was paid to the king, instead of to his own family, since he was not yet legally supposed to have any family. On the other hand, the nation,[1] when it liberated, liberated completely. But it did this only in exceptional cases, and it soon yielded the honor of performing the ceremony to the king. As

[1] As represented by the provincial assembly or the army or even the assembly of the hundred. In Iceland, in some places, the chief priest, *goði*, figured as manumitter, in England the *vicecomes*.

a matter of course, however, neither church nor king nor nation could manumit without the consent or the desire of the lord. Private individuals, again, naturally favored the limited rather than the unlimited manumission. Yet only private individuals, by introducing the slave into a family of free, could offer him the most direct and simple way of becoming a freedman.

Of the two, complete or limited freedom, I hold the latter to be the original and older.

Freedom must at first have been only conditional, a transient thing which could be given and taken away, having almost the character of an experiment. Not that we do not know of cases of complete freedom in very early times, but the whole proceeding was so extraordinary, the slave was given freedom with so much solemnity, his position seemed so new, so without foundation in his previous life, that such freedom, however great a boon, must have impressed the slave himself as having too many dangers in its wake to make it seem safe or even very desirable. The slave had no kin among the

free, could expect no effective help, had no established relation to anyone but his lord, the king not being the natural protector of any but those he himself liberated. The freedman, therefore, was like a lone tree planted *on* a rock instead of in the shelter of it, exposed to the fury of wind and weather. And if the slave, who had lived in the shadow of someone's power all his life, himself may have desired only a gradual rising to the position of freedman, it must be supposed the owner had much less objection. The slave, therefore, most likely sought the position of *litus* or *colonus* or of *aldius*, or he wished attachment to the lord's personal service, rather than absolute independence.[1] As a *litus* or *aldius* the freedman

[1] It is certainly reasonable to suppose that the lord was unwilling to grant more, and the slave had to take what he could get. But it seems equally reasonable that the slave who had reached so far as to have freedom offered him should likewise have an opportunity to *choose* what seemed to him safer, knowing the prejudice against him. The Icelandic sagas speak often of slaves who have freedom offered them as ultimate reward for some very perilous undertaking, but the whole tenor of the northern laws point to this as being an extraordinary occasion, and the reward therefore uncommon. That limited freedom should precede unlimited seems to me, therefore, most natural and indisputable.

had the security of belonging to a class which the law recognized and protected. The Anglo-Saxon or Saxon or Frisian *litus* or the Langobardian *aldius* was one of the nation with certain guaranties, whereas the slave had none. The northern *frjálsgjafi*, who had been given his freedom but still served his lord—these and others indicate the provisional stages which perfectly suited the case and made no break in the logical development. Uncommon, and therefore interesting mostly as an anomaly, is the liberation which at the same time was complete and gratuitous. In most cases, however, it is merely a conjecture whether the liberation was gratuitous or not, since the sources give us little if any information concerning this fact.

It is well to begin with absolute liberation, since that was the most extraordinary. In the liberation of the slave the lord could have had but two objects in view—either his own benefit or that of the slave. If there were reasons other and greater than mere material benefit why the manumission should be complete, the slave would be given

freedom accordingly. Such reasons the church gave in plenty when she recommended liberation of a fellow-being as a means of redemption and a penance for sin. In this case the benefit done to the slave was so clearly covered by the benefit to the lord that it seems as if freedom should have been both complete and gratuitous. And yet equally often the liberation given was of the most limited character.[1] The Germanic nations from the earliest time knew and practiced a complete liberation without cost to anybody but the lord. This occurred when the latter wished to reward for long service or for special service (e.g., saving of master's life). The nation also could liberate upon the plea of extraordinary merit. The slave then was freed by having arms given to him in the presence of everybody

[1] See Swedish law, *OG.* (in Pappenheim, *Launegild und Garethinx*, p. 41): "Now a man for the salvation of his soul gives a slave [*annöþughum*] freedom, then he [the lord] shall both answer and make complaint for him [the slave] until he is introduced into a family, and until then he can give no oath nor legally make a purchase, and whatever is done to him shall be paid for as if it were done to a slave and not higher. § 1. If they will now take him [the slave] into a family this shall take place with the permission of the owner," etc.

at the public meeting-place, perhaps in expectation of a hostile attack or in accordance with the law passage: "When common danger calls all (free and slave) to arms in the defense of the country the slave who succeeds in slaying an enemy in battle is free."[1] The slave also acquired complete freedom by being introduced into the community of free, either directly, by being presented as free by free in the public assembly, *leiða i lög*,[2] or by being introduced into a family of free; which again might have some relation to the possibility of the slave-born child of a free father being brought up as free if manumitted by the father before it was three (or fifteen) years old.[3]

These methods belong to the oldest and most primitive modes of giving a slave his freedom. The slave who was manumitted on the plea of extraordinary merit by being given arms in the company of free, and the

[1] Gþl., c. 312: ". . . . látit fara herör ok stefnt saman þegn ok þrael"; *Saga Olafs hins Helga*, c. 129.

[2] Finsen, *Grágás, Kgsb.*, c. 112: "þá er manne frelse gefit at fullo er hann er i lög leiddr."

[3] Gþl., c. 57, 58. See further, p. 156.

child who was liberated before the age of three (or fifteen) could not have paid anything for their freedom. And perhaps it was this child (or boy) also who was later introduced into the assembly of free as a further security of his personal liberty. In other cases of complete manumission it is far less certain whether the act was without cost to the slave.

One of the more elaborate methods of manumitting to full freedom was the English mode of transferring the slave from the hand of the master to that of another freeman (in this case the *vicecomes*), who manumitted, as a symbol of the separation from the lord. This was always done in the presence of the assembled free. The liberated was then shown the open road and door to signify that nobody could restrain him and he was given a freeman's sword and spear.[1] An even more characteristic ceremony was

[1] Schmid, *William's Laws*, Vol. III, p. 15: "Si qui vero velit servum suum liberum facere, tradat eum vicecomiti per mamun dextrum in pleno comitatu, quietum illum clamare debet a jugo servitutis suae per manumissionem, et ostendat ei liberas via et portas et tradat illi libera arma scilicet lanceam et gladium; deinde liber homo efficitur."

that among the Langobards by which the slave amid clashing of arms in the assembly (*gairþinx*) was passed from the hand of the lord to other freemen till the fourth was reached, who then declared him free and completed the act by leading him to a cross-way, bidding him be at liberty to go where he wished. The slave was then given arms and was henceforth a full-free Langobard.[1]

When the king manumitted as the lord of his own estates or as the head of the nation upon the plea of another, he might do so gratuitously with the freedom as a gift to the slave, but where the king did not manumit his own, the lord of the slave must of course have agreed to have the manumission thus performed.[2] As already indicated, the king soon stepped in and became the chief actor in the drama in which formerly the free owner and the public assembly played the whole part. This participation of the king, however, shows to my mind the extraordinary

[1] *Edict. Rothar*, c. 224.

[2] The lord could as little be compelled to liberate his slave as he could be compelled to sell him. *Leg. Visig.*, v. 4, 17: "Nullus servum suum vendat invitus."

nature of the complete manumission (the king could not take part in anything less), whether it was gratuitous or not. Thus among the Franks the slave was liberated before the assembled freemen by the king (originally the lord) knocking a penny from the slave's hand so that it flew over his head. This was a sign that his services and dues were dispensed with. The king likewise liberated by command or by letter which made symbolic acts and ceremonies unnecessary; but this has less interest to us, since it is not Germanic in character.

The church was not the first in chronological order to benefit the slave, but when she began, she was at least the most constant and untiring advocate of the betterment of his condition, and through her influence strongly animated both nation and king to follow her advice in this direction. The king in particular became the willing instrument of her teachings, mainly because the dependence of the manumitted upon royal protection suited his own absolute tendencies. In the manumitted the king found the same obedient subject and follower as he had

found formerly in the slave. The church in imitation of the Mosaic law succeeded in introducing paragraphs into some of the national codes, according to which the slave who had served his master seven years was to be set free.[1] From the nature of the case (the period of seven years) it seems more likely that this rule was established for the purpose of benefiting the enslaved freeman rather than the slave proper. Likewise in imitation of Mosaic precepts the lord who mutilated his slave in a peculiar fashion (eye for eye, tooth for tooth) or who compelled the slave to work on Sundays was obliged to give him his freedom in return.[2] Through the influence of the church, but upon the command of the king, the provincial laws of Norway decreed (eleventh century) that every year at Christmastide a slave should be given freedom and the different districts within the province should contribute to that effect.[3] To the same

[1] *Aelfred's Laws*, Introd., p. 11; for Swedish laws, see reference in Maurer, *Die Freigelassenen*, p. 23, n. 5.

[2] *Aelfred's Laws*, Introd., p. 20; *Ine's Laws*, c. 3; *Cnut's Laws*, ii. 45, 3.

[3] Gþl., cc. 4 and 5; Fþl., iii. c. 19; cf. *Aethelstan*, Prologue 1.

influence it was due that a liberation before the altar or in the church (with the Gospels placed on the slave's head) had, under certain circumstances, the same effect as an announcement in the assembly of the people.[1] The church set slaves free with the purpose of absorbing them into the body of clerics.[2] Although the lower orders were often composed of slaves and serfs (in case of patronized churches these were still in the power of their respective lords), no one could be admitted to the higher orders who had not been liberated first.[3] In imitation of Roman custom, the church liberated slaves of her

[1] Gþl., c. 61; *Wihtraed*, c. 8; *Luitpr. Leges*, cc. 9, 23, 55, 140; *Pact. Allamann.*, 2, 45.

[2] *Concil Emerit.*, a. 666, c. 18: "Proinde instituit haec sancta synodus ut omnes parochitani presbyteri, juxta ut in rebus sibi a Deo creditis sentiunt habere virtutem de ecclesiae suae familia clericos sibi faciant." *Mansi*, Vol. XI: "Jamdudum illa pessima consuetudo erat ut ex vilissimis servis fiebant summi pontifices"; *Vita Ludovic. Imp.*, c. 20; *Mon. Germ. Scriptores*, Vol. II; *Concil. Wormat.*, a. 868, c. 40.

[3] Milman, *History of Latin Christianity*, Vol. II, p. 549; Löning, Vol. II, pp. 280 ff.; Stutz, *Geschichte des Beneficialwesens*, Vol. I, pp. 150 ff., 201, 224, n. 37; Guérard, Vol. I, p. 350: "Le fiscalin Ebbon qui devint archevêque de Reims" (*Car. C. epist. ad Nic. I, pap.*); "Fiscali nostro Fulconi abbati" (*Diplom Car. C.*, a. 857).

own by means of charts (*carta*), and thereby helped to make this method more general among the Germanic nations. But in most cases the church liberated only to half-free, because she needed cheap labor and a large number of ready hands.

Thus far we have found freedom yielded, or supposed to be yielded, without any expense to the slave. The lord could allow his slave to be bought free by someone else, but it must always have been in the power of the lord to limit the liberty to be given as well as the payment. A mode more in keeping with the natural progress of things was to allow the slave to buy his freedom by his work, or, more exactly, by the product of his work, and to make the completeness of freedom at first dependent upon the payment in full and in one sum. And here we are again confronted by the question of the slave's *peculium* or other means of acquiring property of his own, without which it seems impossible that he could pay the price of liberty demanded. As for the question whether the slave might not draw income

from sources other than land, it is indeed possible and under circumstances even probable that he might be hired out at some trade or work for himself as an artisan; but this can only have happened in the large cities, centers of commerce on the coast, or on the inland routes, where alone many industries could thrive. For the territory of the old Roman Gaul, such centers might not have been few nor far between, but for the bulk of the Germanic population possession of land and what it brought was the natural source of wealth; and this is a condition of affairs which always makes movement within society and changes in fortune very slow.

*Peculium* has already been defined as cattle or land, or where this failed, the opportunity, in form of extra time or extra occasion for earning, which were given the slave with the tacit understanding that what he thus came to possess would be his own. It seems clear that the *peculium* was in the first place intended, not for the ultimate redemption of the slave, but for the maintenance of his family. Whatever it might yield

beyond this was to be counted as pure gain, and might help the slave in the further improvement of his circumstances, e.g., in gaining that peculiar, strictly defined relation which characterizes serfdom; or where this did not exist, it might finally assist him in buying his freedom. That at first the slave was hardly able to make more than a scant living out of his tenure, with the duties which the lord imposed, is only too probable. The phases of this new development are like most of what concerns the slave, as yet largely matter of conjecture; but it seems perfectly certain that, far from emancipating the slave, this cultivating a bit of land for his own good tied him more securely than ever before to the interests of the lord.

The personal relation was changed, but the substantial dependence upon each other for the production of the necessaries of life became closer than ever. The slave could not live as a freeman on his bit of holding, paying rent and being under no further obligation to the lord. He was to a higher degree the tool, the machine, from which

was sought as much return as possible and whose efficiency provided the labor necessary to keep up the estate. To the slave, again, the lord remained as before the main source of bounty, the one who furnished him with an outfit and the means of living, however scant, and the master whose commands directed his actions. It was thus that the slave was gradually turned from a field hand ready for all sorts of work into the regular field laborer,[1] upon whose unlimited weekly work and constant services the lord depended for the tillage and general maintenance of his estate.

The question how soon and how much the slave could earn, aside from his dues, his work, and the maintenance of his family, seems wrapped in an almost impenetrable darkness. And it is vain even to hope for a definite solution of this the greatest of all problems in connection with the slave. Perhaps the best known instance of dependent landholdings of all kinds, from that of

[1] In conformity with the now almost classical presentation which Seebohm gives in his *English Village Community* of the Saxon *þéow* and the *gebur*.

the needy free to that of the slave just emerged from personal bondage, is found in the *Polyptique de l'abbé Irminon*, which, although from the ninth century, gives the best and completest picture of the prevailing agrarian conditions of the Frankish period. Here three kinds of landed holdings are spoken of as existing apparently independently of each other: the *mansus ingenuilis*, the *mansus lidilis*, and the *mansus servilis*. On these are settled rather indiscriminately *free*, *coloni*, *liti*, and *servi*, a circumstance tending to show that the difference among the classes was not very great and that what difference there was originated in the character of the customs attached to the holding rather than in any strong personal distinction. Even as early as this the various grades of tenants, unfree, half-free, free, were fast melting into the one more or less solid multitude of those who personally were somewhat free, but economically decidedly unfree; a mixed condition especially characteristic of the later Middle Ages, as seen in the *serfs*, *villeins*, *eigenleute*, *hörige*,

*hintersassen*, etc. In the ninth century, however, the holdings rather than the status of the tenants indicated the original distinction between each, a distinction which must once have been clearly present to men's minds, otherwise the three kinds of holdings would not have been kept apart so clearly during the centuries following the German conquest.

That the *mansus servilis* was not infrequently parceled out into halves and fourths speaks of a more intensive cultivation, but also of a much larger original holding than it would be thought possible a slave could profitably manage. There was accordingly more or less irregularity in the size of the slave's holding, and also in his dues, owing most likely to the quality of the land.[1] But

[1] The land may have been woodland or waste to be cleared and brought into cultivation and have thus consumed a long time and much work before it could be made equal to other farms of smaller size. When it was sufficiently redeemed to support more than one it was parceled out to several. In such total darkness as rests over the economic condition of the lower and lowest classes during the later part of the Roman period and the beginnings of Germanic settlements, only the simplest, most straightforward reasoning can hope to be more than wild speculation.

whether whole, halved, or quartered, the slave's holding was on an average 10 acres of tillable land and meadow, including a patch of vineyard. As long as the present great uncertainty prevails in regard to the meaning of the surface measurements of the past, the tables worked out by Guérard in his *Prolégomènes*[1] will remain our sole assistance in establishing even approximately the extent of land held by the unfree tenant. The point of greatest interest here is the opportunity thus given to obtain perhaps an idea of the facilities the slave had to earn and save something. Perhaps modern France might furnish data for contrast in this matter, if not for comparison. During the last thirty years by far the greater number of French peasants have been settled on less than 13 acres to the owner. But the frugality, diligence, and industry of the French peasant are proverbial, and besides running his farm, whether leased or owned, he contrives to make additional income by working on other people's farms as well. His

[1] Forming the first volume of the *Polyptique*.

food and clothing cost him very little, and his only grievance is his taxes. He is therefore most likely able to make his living and often more than his living with very small resources indeed.

The slave, however, although in possession of a farm with soil less overtaxed and, therefore, presumably more even in its productivity, and although he demanded infinitely less for his well-being, worked under difficulties such as no free peasant of modern times is encumbered with. Besides, he was at a general disadvantage, since his interest was a very unimportant side issue, for which he was obliged to steal his own time, as it were, instead of giving it openly. The natural result was that the slave, when all dues were paid, would make either a very sparse living or none at all, thus constantly falling back upon the lord's charity. This again must have led to a gradual regulation of weekly service so that the unfree tenant should have more time for himself and could come to pay his dues properly. And here the church very likely was the one

to set an example. The *Lex Bajuwariorum*[1] and *Leges Alamannorum*[2] give the best known instance; according to which the slave, that he might not be oppressed beyond his endurance, was to work three days in the week for the lord, and his services and contributions were especially enumerated. But, even so, in a great many instances the work of the slave was unlimited, and he was expected to do as much as the lord needed or wanted to be done. For the *servus* of the *Polyptique* and other records of the time, although not identical with the *servus* of the *Lex Salica* and other laws, is not a serf, but still a slave; and it is useless to maintain that the slave when settled on land ceased to exist as such. The term *mansus servilis* could not have come into existence if it had not been the holding of a slave and acquired only gradually a different meaning. The original arbitrariness of the relation between master and slave still clung to it even after slavery became real instead of personal. It is obvious in the

[1] C. 14, 6. [2] C. 22 (Codd. A.); c. 22 (Codd. B.).

relation between lord and serf, since the latter was still at the lord's bidding even beyond his customary duties. The starting-point of both relations is by this clearly indicated. The *servus*, therefore, in the great majority of cases, gave the lord more or less unlimited service in the form of *corveé*, *manoperas*, *carroperas* (*hand- und spanndienste*), in the plowing of fields at certain times, in work in the vineyard, watch service, the cutting of trees, and whatever else might be demanded; his duties varying with localities and customs of the estate or the obligations inherent in the nature of his holding. He paid his tribute in equally various ways, in sheep, poultry, wine, shingles, axes, iron, or whatever necessities were assigned to his farm as its share. No doubt all this was the result of a slow accumulation of wants and of the growing prosperity as the country became cleared and built up. But the *servus* was evidently kept closely watched and his obligations imperceptibly increased till he had just as much as he could bear. The slave just settled represented but the

beginning of these wants. As he was new and unaccustomed to thrift there was perhaps little to be gained from overtaxing him.

To the *servus* the chance for accumulating anything beyond the necessary depended to a large extent upon whether he had opportunity for trade, whether a river was near, or a city or a market place; but it depended even more upon the character of the soil, the size of his family, the nature of his dues, and whether the general prosperity of the domain was such that the work exacted was not too heavy. With a household of three to five children, such as the *Polyptique* shows, the duties might be distributed, but the tenure was after all only one, and the greater the number to draw sustenance from its productive power, the smaller eventually the chance for savings. In case of a good harvest the surplus may often have been considerable; in drought or other misfortune famine may equally often have been the unavoidable result. The attempt to make the slave provide for himself was doubtless often a mere experiment that failed. A generation may have been necessary to teach him economy.

But inasmuch as the slave, whatever his capacity, must always have retained the power to receive and keep gifts,[1] he had always opportunity for accumulating something toward his liberation. To say anything more definite is unfortunately out of the question at the present stage of inquiry.

I am well aware of the fact that the price of liberty is mentioned only in the rarest instances. In northern laws the fee is stipulated.[2] Other laws are mute.[3] But this

[1] Mentioned incidentally, *Luitþr.*, c. 113.

[2] Six weighed ounces (Norweg.) = 4.2 sol.: (Gþl., c. 62); but it is reasonable to suppose that it must have been more ("leysings aura" suggests something different from "þraell aeða ambótt verðaura sina"; cf. Gþl., c. 61); 2 weighed marks (Swed.) = 12 sol. (Amira, Vol. I, p. 445); but in this case it is evidently a freeman enslaved for whom another pays, and it does not prove that this is what a slave of long standing would be expected to pay for himself. By the same author we are told on p. 478: 3 weighed marks = 18 sol.(?). None of these, however, quite fits our case.

[3] The throwing of the denar is symbolic, and cannot have represented the actual fee. The old documents speak repeatedly of 4 den. as the symbolic indication of entering the state of bondage, but where the redemption from slavery occurs, 2 den. (sometimes more) are mentioned as a census imposed upon the freed person. There is something distinctly Roman in this (*Coll. Sang.*, 16; *Form. Augen. Coll. B.*, 21, *Extrav.*, i. 19, 20). See also Loersch and Schröder, Nos. 51, 71.

cannot mean that liberation in all such cases was gratuitous, but rather that the slave paid with such amount as would correspond somewhat to the benefaction bestowed upon him, and the whole matter was of so small an importance that the laws found no cause for special mention. In Norse laws, too, liberty can be given without payment, complete and gratuitous.[1]

The more regular method of liberation, however, according to these laws, was neither always complete nor gratuitous, and expressed the relation between master and slave very clearly indeed. Liberation by this method was represented by two separate stages: first, a partial gift, and next a purchase on the part of the slave. These events may well have been removed from each other by several years, or both may not have happened in a given case. The gift of freedom might take place in church by laying the Gospels on the slave's head or by seating him, while the formula was spoken, on the "chest of arms," which was below the seat

[1] ("Skattalaust oc skulda"), GþL., c. 61.

of the head of the family, or even in this very seat itself.[1]

If he remained only thus partially liberated, he enjoyed no full freedom; he was henceforth a freedman of inferior character, a *frjálsgjafi*,[2] under numerous obligations to his master. He could have more perfect freedom only by paying the stipulated fee and holding what was called his liberation beer.[3] This was a festivity prepared by the

[1] Gþl., c. 61: "Now the man leads his thrall to church, or to seat on the chest, and gives him freedom," etc.

[2] To whom *freedom was given* as distinct from the one who *redeemed himself*, (*leysingr*, although the term *leysingr* is sometimes used for both kinds of freedmen).

[3] Gþl., c. 62: "Now [if] the [would-be] freedman [*leysingr*] wishes full freedom in regard to what he buys and whom he marries [*no prymslir*], then he shall make his liberation beer, beer of at least three bushels [of malt], and bid to it his lord with witnesses, and bid not his antagonist, and seat him [the lord] in the high seat, and lay six aurar in the scales the first evening, and offer him *leysings aurar*. Now if he [the lord] accepts them, it is well, but if he gives them back, then it is as if they were paid. But if he [the lord] will not come, then the leysingr shall lead [forth] his witnesses that he invited him [the lord] to the thing, and let the high seat stand empty, and lay six aurar in the scales, and invite him [the lord] to be seated the first evening [as if he were there], that is called *leysings aurar*. But if he [the lord] has someone [there] to receive the offer [in his stead] it is well, but if no one receives

(manumitted) slave to celebrate and at the same time make public his release. Here in the presence of company sufficiently numerous to witness the act he was to offer the lawfully demanded fee, which, in this case, must be nominal, since it represented only one-fourth of what was looked upon as his usual market value, i.e., 6 aurar as against 3 mark = 24 aurar = 18 sol.[1] According to another provincial law, a ram was to be slaughtered at the liberation beer, its head cut off by a freeman, and from its neck was to be taken the so-called *halslausn;* in other words, the liberation fee, perhaps hung in a bag around the ram's neck (Maurer) as a symbol of the final deliverance of the neck of the slave from the yoke of thraldom and the fear of death to which he was constantly subject.[2] The act was afterward announced

it, then he [the *leysingr*] shall keep the money till the next day and offer it to him at the [midday?] meal. But if the man does not accept it then he [the *leysingr*] shall have it and keep it till he claims it to whom it belongs; then the liberation beer is held fully.

[1] Gþl., c. 62; Fþl., ix. c. 12; *Bjark.*, iii. c. 166.

[2] Fþl., ix. c. 12. The slaughter of a ram may also be explained as the survival of a former sacrificial act, thus sig-

at the assembly, in order that all might know it and no complications arise. This announcement was to be repeated twice during twenty years, by which time it was supposed that nobody would endeavor to contest the right of the liberated. The freedman was henceforth *leysingr*, not *frjálsgjafi* any longer.[1] The slave whose right to choose his place of living, to marry, and to manage his property had not been contested during twenty years was to be looked upon as free.[2]

nifying the solemnity of the occasion. Maurer, *Bekehrung*, Vol. II, p. 199, n. 44, was the first to call attention to this possible explanation.

[1] Fþl., ix. c. 12.

[2] Gþl., cc. 61 and 66. To me this case looks like that of a runaway slave who had fled to the woods of another folkland, the mountains cutting off pursuit, where he succeeds in avoiding discovery, living as hunter or coal-burner or what not, and maintaining his liberty by his very isolation. Here he may have cleared land and established an existence. Some of the homes on the very edge of the mountain ridge, which are seen from the Norwegian valleys, must originally have been built by some desperate individuals, thieves, outlaws indeed, who had fled "justice," and maintained themselves where they could be least molested. In this case freedom was slower in coming than to the slave who hid in cities, and who, when the year was over, was free (Schmid, *William's Laws*, Vol. III, c. 16).

The slave, however, to whom the king awarded liberty had no need of any liberation beer.[1] Likewise, the property given the liberated by the king became a family possession with the quality of inherited estate.[2] The slave to whom the folkland yielded liberty was free from serving in the army.[3]

If, in these cases, according to our sources, the liberated acquired full liberty and equal rank with the free, it was because the necessary formalities had all been attended to: the private event had been completed by the public. The natural conclusion seems to be, therefore, that the less solemn and circumstantial, the more private in nature the act of liberation was, the more it had the character of an agreement between slave and master with no strong binding power for the future. Only when it assumed the character of a definite stipulation, accompanied by the necessary publicity, or when the whole community had been called upon to witness, and, so to speak, sanction the act,

[1] Gþl., c. 61. [2] Gþl., cc. 129, 270. [3] Gþl., c. 298.

did it have binding force for all parties concerned.

When liberation by means of chart came to supersede the spoken word, the semi-private nature of the letter, as well as the possibility of stipulating exactly the limits of the freedom given, made this form the commonest in manumission to inferior rights, to *tabularius*, *chartularius*, etc. But these kinds are characteristic of Romanic, rather than Germanic, customs. In the North the reason for making a slave a *frjálsgjafi* instead of a *leysingr* was either the master's lack of desire to go farther in liberality, or the failing of the slave to satisfy the master's demands. That the master was not always to be blamed for tardiness in yielding to the desires of the slave for freedom can easily be understood when it is seen how little the liberation fee after all could recompense the lord for loss of absolute property right.[1]

[1] In answer to the question why the liberation fee was so small, it must be pointed out that, inasmuch as money was exceedingly scarce (the fact of its having a value of 10:1 of what it has today points to this), six aurar in weighed and pure silver was a sum of great magnitude to the slave and a not

It seems to be in recognition of how insufficient to the lord the liberation fee in many cases really was that the Norwegian provincial laws decreed that the slave who had already bought his freedom should, nevertheless, work a year for his master.[1] Just as there were reasons why a liberation which was complete should also be gratuitous, so there were reasons why a manumission which was gratuitous should be limited in nature. An instance is found in the liberation according to Swedish laws when the lord gave a slave (*annöþugher*) freedom, but remained responsible for him in every way, thus leav-

unwelcome increase to the funds of the lord. At a time when it must be supposed that large fines were usually paid in kind, in woven goods, or in cattle (Gþl., c. 223), the ready money brought together by the slave or the freedman had a worth beyond its actual value, and was not altogether undeserving of its name of liberation fee. Besides, this fee was not, and could not be, a compensation for future service, but for alimentation in the past, which the lord looked upon as an outlay that he did not wish entirely thrown away. This alimentation the freedman settled on land might henceforth furnish himself, the produce yielded paid for the land, and the two items of expenditure were thus made to balance more evenly.

[1] Gþl., c. 61.

ing his position otherwise no better than it was before.[1] And here we meet those stages of conditional freedom which came earliest and lasted longest, a course of gradual and painfully restricted improvement.

The best representative of the earliest forms of liberation, and the lowest stage of freedom is the freedman just mentioned, whose position was not much better than that of a slave until he was introduced into a family. Indeed, he appears so distinctly typical that from the point of view of this lowest type it seems worth while to consider such apparently different cases as that of the Langobardian *aldius* and the already mentioned Norwegian *frjálsgjafi*.

The Langobardian *aldius* was liberated apparently without any formalities whatsoever; he was attached to the soil; he could not leave the lord's domain without drawing down upon himself punishment, as did the slave. The relation between the lord and the *aldius* was regulated. The patron gave

[1] O. G. Aerfb., 20; Pappenheim, p. 41, translated on p. 234, n. 2.

the freedman protection, and the freedman owed him duties. The *aldius* could have property, but he could not dispose of it; the patron was responsible for all his acts; for satisfaction the law turned to the lord, not to the freedman. In the eyes of the law the *aldius* was but an instrument in the hand of the free. In all these particulars the difference between the slave and the *aldius* is almost nil. The *aldius* could have a family, but had no right to marry without his lord's consent. He, however, enjoyed the protection of the law to a certain extent, since he was regarded as belonging to a particular class instead of being a nondescript and part of an inventory.[1]

A little better than the *aldius*, but supplementing our idea of his state quite wonderfully, was the Norwegian *frjálsgjafi*, who was as yet free only in an informal way, without the payment of fee, and also without the liberation beer.[2] The law looked upon

[1] *Roth.*, cc. 258, 235, 216, 219; *Grimvald*, c. 1; *Luitpr.*, cc. 68, 139, 143.

[2] He had no free disposition of what he possessed, or at least only to a trifling amount (one *örtug*); (cf. Guérard, Vol. I,

him as in debt to the lord for the liberation fee, and allowed the latter without fine to force him to pay even with blows.[1] Very likely the lord settled this freedman on land, for how was he otherwise to maintain himself? Thus the dependent relation became further established. For this land he paid some sort of tribute, and was otherwise left to shift for himself. Furthermore, he was to help to support the lord in case the latter became destitute.[2] In the same way the destitute freedman could call upon the lord for assistance. The lord was his natural mainstay, and obliged to support him and his family; but this duty on the part of the lord was by no means unlimited; he could under

p. 306, n. 12, where in the thirteenth century serfs could not bequeath to a value of more than 5 sous): (Gþl., c. 56). He could not marry without his lord's consent (Gþl., c. 63). He had only limited right to move about. Neither could he settle where he pleased. If he ran away he became a slave (Gþl., cc. 61, 67). His children could not inherit from him nor he from them; they belonged to the lord's household, and he was himself subject to the *mundium* of the lord (Gþl., cc. 65, 296; Fþl., cc. 10, 13).

[1] Gþl., c. 61.

[2] Gþl., c. 129. Compare Maurer's explanation of what is meant by *fostrlaun* on p. 68 of his treatise.

circumstances relieve himself of the whole burden by making the freedman and his "gang" starve to death till only one was left (*grafgangsmen*).[1] Those who had complaint against the freedman or a demand for compensation from him turned to the lord for satisfaction.[2]

The moral attitude of the *frjálsgjafi* toward the liberator the laws characterize by the name *þrymslir*, which means "respectful behavior," and they even go so far as to specify how this respectful behavior was to be understood. The freedman was not to attempt to rob his master of property nor to sit in judgment against him, never swell the host of his enemies, nor bear any witness against him, nor be on the side of the lord's betters unless permitted to do so—regulations of an almost feudal character which throw strange light upon the possibilities

[1] "The barbarous custom of an almost forgotten past." A grave was to be provided for them in the churchyard, and there they were to be put to die; the lord, however, was to take out of the grave the survivor and bring him up (Gþl., c. 63). See the whole complicated matter in Maurer, pp. 69–74.

[2] Wilda, p. 215.

after all open to such a supposedly inferior being. If the freedman committed any of these disloyal acts he was to be reduced to his former place and have all his property forfeited.[1]

It was possible, however, for the *frjálsgjafi* to buy himself free from the *þrymslir*, and thus be like the freedman of higher order, the *leysingr*. Yet the *leysingr* was not relieved from some obligation toward his patron,

[1] Gþl., c. 66: "The freedman shall show consideration [have *þyrmslir*] toward his lord. He shall not plot for the purpose of depriving him of his property nor of his life; nor shall he be against him in the court unless he has his own case to defend. Then he shall uphold it against him as against other men, and not attempt to measure himself with him in words, and wield neither sword nor spear [point and edge] against him, and not swell the host of his enemies, and not bear witness against him, or aid those who are mightier than he [the lord], unless he [the freedman] has his permission, and not join a court hostile to him. And if he does any of these things he shall go back into the place he was in before and redeem himself from it with the value of it, and he shall also have lost his property. Two shall fulfil these obligations, father and son, against the other two [father and son on the other side]. If his [the freedman's] son commits any such fault he shall pay the lord the value of it, the same as did his father." The attitude of the vassal toward his seigneur is here forestalled and the position of the *frjálsgjafi* is not very different either from what little we know about the Roman client of earlier times.

although he had bought off the most oppressive. He had to expect to aid the lord in an emergency, to support him financially, if he was in need. But he was called *vánarman* rather than *þrymslirman*, i.e., his duties were secondary rather than primary, he was called upon only in case of utmost necessity, was not at the beck and call of the patron. He had the right to marry,[1] to come and go without the permission of the lord, and to dispose of his property, and his children could inherit it.[2] He, too, must have been settled on land[3] as a means of maintaining himself, unless he already possessed land of his own, which, of course, was not impossible.[4]

The king, the nation, or the private individual must have endowed the freedman with property at the liberation to make him able to take care of himself. Public land must have been given or opportunity opened up to him of getting land by clearing it.

[1] Gþl., cc. 61, 62.

[2] Gþl., c. 66. The lord inherits from the freedman of higher grade in the ninth degree, while in the tenth the king is the heir.—Gþl., c. 106; Fþl., ix. c. 11; Maurer, pp. 55–56.

[3] *Eyrbyggja Saga*, c. 32, 2. [4] Gþl., c. 91.

That in case of settlement of a new country the freedman and even the slave had a handsome opportunity, if not altogether a golden one, seems indicated by the Icelandic sagas.[1] As such settler the freedman of higher grade must have enjoyed certain privileges, have been a tenant in fact, whose rent and dues were not heavy. But if one remembers the general situation of the tenant in a country with such small agricultural resources as exist even today in Norway and the possibility for only sheep culture in Iceland, the chances for any sudden or great economic independence on the part even of the best situated freedmen seems rather poor; although the sagas give instances such as referred to in the notes.

Between the northern *frjálsgjafi* and the *leysingr* in regard to rights and well-being stands the *litus* of Continental origin, who seems sometimes to have been under a severer tutelage of the lord than might be expected in a freedman liberated to the degree

[1] *Laxdoela Saga*, cc. xxv. 4; vi. 8–9; *Eyrbyggja Saga*, cc. 8, 4; 30, 2; 31, 5.

of *litus*. There must have been some difference between the *litus* of early Germanic origin and the one which figures later. Where the old *litus* remained in existence, as he did among the Saxons and the Frisians, he seems accorded very few rights indeed, his greatest privilege being his family relations and his distinction as belonging to a class. But the *litus* is best studied in connection with the development of serfdom.

The liberation by means of chart instead of by verbal grant (the chart not being revocable, as was the verbal manumission), which became so general during the centuries following the eighth and ninth, helped to create a mass of half-free who existed for nothing so much as to recruit the dwindling *coloni* (*tributarii*) and *liti*,[1] although they bear other names. These had as yet no special class privileges, the nature of their freedom was indicated in the chart, and according to this they ranked higher or lower within the general sphere of their liberties

[1] A tendency which, on the Continent, liberation had (*Lex Rib.*, tit. lxii. 1).

(*tabularius*, *chartularius*). Their position is also largely determined by the position of the patron, whether they are *homines regii* or *ecclesiasticii*. The liberated body servant or unfree (half-free) soldier belonged to their rank. They presented a new stage in the development of the unfree, that of serfdom, in all its numerous shadings and rubrics of dependence and semi-liberty.

The freedman of whatever kind acquired what he had not before—a legally fixed value.[1] For the *aldius* it was one-third[2] of that of a freeman, for the *litus* it was one-half.[3] The liberated Swedish *annöþugher* who was not yet introduced into the family, had only the value of the slave, the *frjálsgjafi*, and the *leysingr* generally the same (according to the laws one-half [Gþl.] or one-third [Fþl.] of a freeman).

Among the freedmen not yet mentioned, the Langobardian full-free but not *ámund*[4]

[1] Gþl., cc. 91, 198, 200; *Lex Sal.*, tit. xlii. 4 (*litus*).

[2] Or a trifle more; 60 sol. vs. 150 (or more); cf. *Luitpr.*, c. 62.

[3] 100 sol. (*Lex Sal.*, tit. xlii. 4; *Lex Fris.*, tit. i. 4, 7, 10).

[4] *Roth.*, c. 224.

(his own master) and the Frankish (*Chamav.*) liberated *per hantradem*,[1] who was free but bound in obedience to a patron, have much in common with the *leysingr*, and even more with the northern freedman of nondescript character who was liberated *skattalaust oc skulda* but under *þyrmslir*. In regard to the Frankish slave liberated *per hantradem*, the influence of the church upon national customs is strangely evident. The liberation (according to Sohm[2]) consisted in an oath taken by twelve freemen (among them the liberator of the slave) in the church while holding each others' hands (*hantradem* = *handreichung*), certifying that the slave henceforth was to be looked upon as free. In this case the proper place for such liberation had been changed from the assembly of the people (*malloberg*) to the

[1] *Lex Franc. Cham.*, cc. 11 and 12. "Hantradem" appears to me merely an awkward translation of *manumissio* = *hant* (*manu*), *tradam* (*mittam*), as if it were a formula which would correspond with "se ille foris de eo miserit (sua manu)." The twelve "compurgators" are necessary as witnesses, the owner manumits himself the twelfth person in the party.

[2] Sohm, *Reichs- und Gerichtsverfassung*, pp. 573 ff.

church, but it is not impossible that the liberty of the freedman suffered in consequence.

In the North[1] one of the most instructive phases of this entire social movement is the slowness of upward progress, even after freedom or partial freedom had been obtained. Combined political and economic considerations favored the holding the freedman down. Brilliant exceptions could not change the general attitude, although they created valuable precedents. Besides, the treatment of the slave as a man, and making him a man legally and socially, called forth new feelings of aversion among the free; the

[1] In the South (on the Continent) the freedmen were far more lost among the mass of half-free servants and laborers needed to maintain the large centralized estates. As the decades went by a large number of them found their proper place without very great friction; the development of feudal tenure and military service gave them, in the end, economic independence and social position, and they ranked among the faithful adherents of an all-powerful aristocracy, until they had risen so high as actually to form a lesser but serviceable nobility. There is another side to the career of the freed slave which is chronicled in the dreary sameness of serfdom, but this, too, is fused with the existence of the free, in this case the unfortunate, reduced free.

coarser differences were done away with, the finer remained and erected a barrier which for generations held the freedman outside the pale of perfect freedom. To the free population the freedman was unwelcome. He was not of their kith and kin; he had risen from the lowest of lives; he was an outsider who had no room in their midst; naturally the more insignificant he appeared, the longer he remained outside, the sooner he could hope for recognition. Should he attempt to force himself upon them, and there were no special reasons for making an exception, he would not be tolerated at all. To the master, the fee received could not compensate for the loss of a permanent laborer, and the slave could thus not be said to have really *paid* for his freedom. Freedom was, after all, more in the nature of a gift than of a purchase, and was, also, most of the time called by that name. Accordingly the master, in return for his liberal behavior, reserved for himself some definite consideration. Prolonged dependence, therefore, lasting till time had leveled differences, till dues had all been

paid, and a tradition created in behalf of the freedman, was the only natural solution of the problem.

In spite of the regulations of the laws, it must even be doubted whether in general—the *liti* and *aldii* excepted—the grades of the conditionally liberated had any very definite outlines; whether from the *annöþugher*, who was given freedom for the salvation of soul, but who was otherwise not better than a slave, to the *leysingr*, over whom the lord exercised only a nominal *mundium* (though his freedom could not be established for twenty years), whether in each and every case the greatest difficulty for the freedman did not, after all, lie in the indefiniteness of the position, which it was too often in the arbitrary power of the free to change for better or for worse.[1] Where was his unprejudiced protector to be found, outside of the king and the church? The lord still remained the patron until the liberated, by

[1] See the persistent efforts of Thorolf Haltfoot to harm and finally to do away with Ulfar, the freedman (of another chief), because Ulfar happened to advise Thorolf wrongly in some small matter (*Eyrbyggja Saga*, cc. 8, 30–32.)

successive generations, had established a state of freedom, or had founded a family, or had acquired a clearly recognized position. It seems as if, owing to these circumstances, the liberation by chart, which distinctly determined the nature of the freedom given, should have been much preferred and popular for this same reason. For this practical device, working toward order and fairness, the church is to be thanked.

How clearly the popular opinion, and accordingly the laws, distinguished between the highest among the conditionally liberated and the really free is best seen in the northern laws, but it also appears in the conditions on the Continent, particularly in the marriage relations.[1] In the South, where many conditions met, the power of the king and the church, and, not least, the increasing differentiation of society, helped to make the

[1] The marriage between slave and free, liberated and free, and mixed relations, likewise the more or less fluctuating rights, or loss of rights, resulting from this, only further confirm this view of the matter. The question has been so extensively treated by Koehne in his contribution (*Geschlechtsverbindungen der Unfreien*) to Gierke's *Untersuchungen* that I need only refer to this book.

difference less oppressive. In the North, however, where society was more of one stamp and prejudices wore off but slowly, the liberated slave had to travel a long and tortuous path before he could call himself an equal of the free. In Norse law it took three generations within the free to create a family in the sense of a solitary unit of relations who protected and supported. The manumitted slave who had not paid his liberation fee, or whose freedom had not been publicly announced, could only in the fifth generation acquire the rights and freedom of a *leysingr*, the one who completed all necessary formalities. The *leysingr* again, under normal circumstances, could only become fully free in the fifth generation,[1] while only the eighth generation could speak of belonging to a free family. Better guarded from the intrusion of disagreeable elements the society of free could never be; and these regulations so anxiously preserved

[1] Although his condition improved from the second generation to remain thus stationary for two generations more, forming the "family" (*ætt*) of the *leysingr*. See Maurer, pp. 58–66.

in northern laws were perhaps once common to all Germanic nations.

There was, however, one way of entering a free family and enjoying its privileges and protection at once. This, as already indicated, consisted in the freedman being introduced into a family of free. In fact, the preservation of freedom for the liberated was, at least in some instances in the earliest time, dependent upon this introduction.[1] Without this the freedman had no guaranty that the liberty granted would be more than a passing experience. That fact may have a direct bearing on the condition of the above-mentioned *annöþugher*. This method of final liberation seems to be preserved only in the northern laws, though it may once have existed in Germanic society elsewhere. That this formal introduction was by no means a frequent occurrence, but was most likely reserved for exceptional cases, such as the final legitimation of a slave-born child (of a free father), is evident from passages in

[1] Amira, Vol. I, p. 541 (where the necessary references are to be found).

Norse law, where the ceremony appears in its most elaborate form. In other words, we may suppose that the last and highest grade of liberation, in which liberty was conferred absolutely and involved privileges of membership in a free family, was confined to the occasional freeing of such illegitimate slave-born children. Historical evidences show that all through the history of Germanic life—the family of the free-born being the nucleus and mainstay of society—the child born of a slave mother had no place within its precincts. Its slave birth made it unfit for association with free members. On the other side, the fact of its semi-free parentage offered certain redeeming possibilities which the father or the family were at liberty to make use of, in fact, which they were sometimes obliged to take into account. If, for instance, the mother was free and the father a slave, she had the power to make her child her own equal if she wished. In certain laws such a child was, by virtue of its birth, free. Not so, however, if the mother was a slave and the father free. The

father might make his child his equal only if he liberated it before it was three years old.[1] The child then grew up as its father's equal, possessing liberty without any restrictions of independence. But even such a child[2] had not *all* the rights accorded to his brothers. He inherited only when some other link in the chain was missing, and could receive gifts from his father only as a matter of condescension after the consent of the nearest heir had been gained. Full rights and perfect equality were possible to him only if the father or the next of kin decided to perform in his behalf the act of introduction.

This act was of peculiar and ancient type. It took place in connection with a social gathering and required the slaughtering of an ox and the brewing of a sufficient quantity of malt into beer. From the skin on the right forefoot of the ox was to be made a shoe. The formal introduction and legitimation consisted in the father (or whosoever

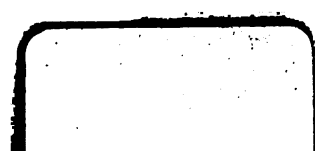
[1] Gþl., c. 57.

[2] Gþl., c. 58. The change in age in this chapter suggests modification in demands and a later date, at least for this passage.

else was called upon to perform the act) stepping into the shoe, after him the one who was to be introduced, then the nearest heir, and finally the rest of the family, each pronouncing at the same time the appropriate formula which indicated the particular meaning of the ceremony.

As in the liberation of the ordinary slave this legitimation and admittance into the family was also to be made public during twenty successive years, when the person thus introduced could inherit, and with the inheritance could assume the full publicity of his membership. The laws indicate, indeed, that any illegitimate child, free or unfree, could be thus benefited; but it appears as if the improvement was meant especially for the slave-born rather than the free-born who might be less in need of it. That not any slave (in general) who might have claim upon consideration would be thus honored, that the family would not open its bosom to welcome any but him who had a natural claim upon its protection, seems clear to one who has observed the exclusive

character of the family among the northern nations.

But however forbidding toward the intruder, nowhere else does the family show its intention to better the condition of the slave-born in such a marked and intimate way. This last step upward of the slave, to be sure, was largely a matter of chance, although rather sublime, and more in keeping with the real needs of a friendless and exploited being than the gift of freedom on the field of battle or by clashing of arms in the Thing. And with this his final rehabilitation we may fitly conclude our review of the vicissitudes in the career of the slave.

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